

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF PUERTO RICO
3
4 In Re:) Docket No. 3:17-BK-3283 (LTS)
5)
6) PROMESA Title III
7 The Financial Oversight and)
8 Management Board for)
9 Puerto Rico,) (Jointly Administered)
10)
11 *as representative of*)
12)
13 The Commonwealth of)
14 Puerto Rico, *et al.*) October 28, 2020
15)
16 Debtors,)

11
12 OMNIBUS HEARING
13 BEFORE THE HONORABLE U.S. DISTRICT JUDGE LAURA TAYLOR SWAIN
14 UNITED STATES DISTRICT COURT JUDGE
15 AND THE HONORABLE U.S. MAGISTRATE JUDGE JUDITH GAIL DEIN
16 UNITED STATES DISTRICT COURT JUDGE
17

18 APPEARANCES:
19
20 ALL PARTIES APPEARING TELEPHONICALLY
21
22 For The Commonwealth
23 of Puerto Rico, *et al.*: Mr. Martin J. Bienenstock, PHV
24 Mr. Brian S. Rosen, PHV
25
26 For Puerto Rico Fiscal
27 Agency and Financial
28 Advisory Authority: Mr. Peter Friedman, PHV
29 Mr. Luis C. Marini Biaggi, Esq.

1 APPEARANCES, Continued:

2 For National Public
3 Finance Guarantee Corporation: Mr. Marc E. Kasowitz, PHV
4 Mr. Adam L. Shiff, PHV

5 For the Official
6 Committee of Unsecured Creditors of all
7 Title III Debtors: Mr. Luc A. Despins, PHV
8 Mr. John Arrastia, PHV

9 For Ambac Assurance
10 Corporation: Ms. Atara Miller, PHV

11 For the Lawful
12 Constitutional Debt Coalition: Mr. Susheel Kirpalani, PHV

13 For the QTCB
14 Noteholder Group: Mr. Kurt A. Mayr, PHV
15 Mr. Sabin Willett, PHV

16 For Sculptor Capital
17 Management: Mr. Thaddeus D. Wilson, PHV

18 For ERS Bondholders: Mr. Benjamin Rosenblum, PHV

19 For the Constitutional
20 Debt Group: Mr. Joseph Palmore, PHV

21 For the Ad Hoc Group
22 of General Obligation
23 Bondholders: Mr. Mark Stancil, PHV

24 For the Ad Hoc Group
25 of Constitutional Debtholders: Ms. Theresa Foudy, PHV

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29 Proceedings recorded by stenography. Transcript produced by
30 CAT.

1	I N D E X	
2	WITNESSES:	PAGE
3	None.	
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5	EXHIBITS:	
6	None.	
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1 San Juan, Puerto Rico

2 October 28, 2020

3 At or about 9:37 AM

4 * * *

5 THE COURT: Buenos dias. This is Judge Swain
6 speaking.

7 MS. NG: Judge, give us one more minute, because I
8 just got a little glitch in Court Solutions, so --

9 THE COURT: All right. I'll wait.

10 MS. NG: Unfortunately, there's a problem with the
11 connection --

12 Counsel, can you all hear us or no?

13 UNIDENTIFIED PERSON: We can hear you.

14 UNIDENTIFIED PERSON: Yes.

15 UNIDENTIFIED PERSON: Yes.

16 MS. NG: Okay. Judge, I'm sorry about that.

17 THE COURT: All right. Then we will proceed.

18 Ms. Tacoronte, would you please call the case?

19 COURTROOM DEPUTY: Good morning, Your Honor.

20 The United States District Court for the District of
21 Puerto Rico is now in session. The Honorable Laura Taylor
22 Swain presiding. Also present, the Honorable Judith Dein.
23 God save the United States of America and this Honorable
24 Court.

25 Bankruptcy case --

1 THE COURT: Thank you, Ms. Tacoronte. I'm sorry.

2 COURTROOM DEPUTY: I'm sorry, Your Honor.

3 Bankruptcy case 17-3283, *In re: The Financial*
4 *Oversight and Management Board for Puerto Rico, as*
5 *representative of the Commonwealth of Puerto Rico, et al.*, for
6 Omnibus Hearing.

7 THE COURT: Thank you, Ms. Tacoronte.

8 And again, buenos dias. Good morning. Welcome
9 counsel, parties in interest, and members of the public and
10 press. This is Judge Laura Taylor Swain speaking.

11 As has been the case with our hearings over the past
12 several months, today's telephonic Omnibus Hearing is
13 occurring in what continue to be challenging times for all
14 stakeholders in these Title III proceedings.

15 Our thoughts remain with all of the people on the
16 island and on the mainland who have been affected by the
17 Coronavirus pandemic, and with all who have been affected by
18 the earthquakes and the hurricanes that have been going on
19 this year.

20 We also note, with sorrow and with sympathy for the
21 Puerto Rico District and First Circuit Court families, this
22 week's passing of Circuit Judge Juan Torruella, who played
23 extraordinary roles in the development of the law and in the
24 life of this island.

25 To ensure the orderly operation of today's telephonic

1 hearing, all parties on the line must mute their phones when
2 they are not speaking. If you are accessing these proceedings
3 using a phone and a computer, please be sure to select "mute"
4 on both the Court Solutions dashboard and on your phone. When
5 you need to speak, you must unmute on both the Court Solutions
6 dashboard and on your phone.

7 I remind everyone that, consistent with the court and
8 judicial conference policies and the Orders that have been
9 issued, no recording or retransmission of the hearing is
10 permitted by any person, including but not limited to the
11 parties, members of the public, and the press. Violations of
12 this rule may be punished with sanctions.

13 I will be calling on each speaker during these
14 proceedings. When I do, please identify yourself by name for
15 clarity of the record. After the speakers listed on the
16 Agenda for each of today's matters have spoken, I may provide
17 an opportunity for other parties in interest to address
18 briefly any issues raised during the course of the
19 presentations that require further remarks. If you wish to be
20 heard under these circumstances, please state your name
21 clearly at the appropriate time. Don't just use the wave
22 function on the Court Solutions dashboard, but speak your
23 name. I will call on the speakers if more than one person
24 wishes to be heard.

25 Please don't interrupt each other or me during the

1 hearing. If we interrupt each other, it is difficult to
2 create an accurate transcript. Having said that, I apologize
3 in advance for breaking this rule, as I may interrupt if I
4 have questions or if you go beyond your allotted time. If
5 anyone has difficulty hearing me or another participant,
6 please say something immediately.

7 The time allotments for each matter and the time
8 allocations for each speaker are set forth in the Agenda that
9 was filed by the Oversight Board on Monday, October 26, 2020.
10 The Agenda, which was filed as Docket Entry No. 14930 in Case
11 No. 17-3283 is available to the public at no cost on Prime
12 Clerk for those who are interested.

13 I encourage each speaker to keep track of his or her
14 own time. The Court will also be keeping track of the time
15 and will alert each speaker when there are two minutes
16 remaining with one buzz, and when time is up, with two buzzes.
17 Here is an example of the buzz sound.

18 (Sound played.)

19 THE COURT: If your allocation is two minutes or
20 less, you will just hear the two final buzzes.

21 If we need to take a break, I will direct everyone to
22 disconnect and dial back in at a specific time. This morning
23 we will proceed from 9:30 -- well, from now until 12:50, and
24 there will be a break in between the arguments of the motions.
25 And then, if necessary, we'll resume at 2:10 and go to 5:00.

1 The first Agenda item is, as usual, status reports
2 from the Oversight Board and AAFAF. As I requested in the
3 Procedures Order, these reports have been made in writing in
4 advance of this telephonic hearing and are available on the
5 public docket at Docket Entry Nos. 14949 and 14958 in Case No.
6 17-3283. And I thank the Oversight Board and AAFAF for their
7 comprehensive and detailed reports.

8 Does counsel for the Oversight Board have any remarks
9 at this time in addition to the written status report?

10 MR. BIENENSTOCK: Your Honor, this is Martin
11 Bienenstock. Sorry. It took me a while to unmute both
12 buttons. But no, we don't have anything additional, but, of
13 course, we're ready to answer any questions the Court has.

14 THE COURT: Thank you. Good morning,
15 Mr. Bienenstock. I don't have any questions for the Oversight
16 Board at this time.

17 And so now I will turn to counsel for AAFAF. Does
18 counsel for AAFAF have any remarks at this time in addition to
19 the written status report?

20 MR. MARINI BIAGGI: Good morning, Your Honor. Luis
21 Marini for AAFAF.

22 Your Honor, we don't have anything to add other than
23 what we put in the report.

24 THE COURT: Thank you, Mr. Marini. I do have one
25 more question for you. And I don't know whether you're in a

1 position to answer it, but in reading about the arrangements
2 that have been made to try to subsidize efforts for families
3 to connect their children with distance learning, I was
4 wondering if you know what proportion of Puerto Rico's school
5 children are actually being reached, are actually
6 participating in distance learning at this time?

7 MR. MARINI BIAGGI: Well, Your Honor, our
8 understanding is that all of them are participating in one of
9 the methods that the Department has for distance learning.
10 They have at least three methods: They have online learning
11 through a computer; they have distance learning through the
12 government's television program; and they have distance
13 learning where parents can pick up, you know, printed modules
14 for their children. The students are participating one way or
15 the other throughout them.

16 I don't have the latest figures, Your Honor, in terms
17 of which percentage is involved in which part. I do know that
18 most of them are taking classes through the online methods
19 that I described.

20 THE COURT: Well, I'm pleased to hear that, and I am
21 pleased to hear that there are three modalities that are being
22 used vigorously. Here on the mainland as well there are
23 problems with internet connectivity and making effective
24 distance learning for children. So thank you for adding that
25 information.

1 Do any other counsel who are on the line have
2 questions or comments in connection with the status reports?
3 State your name clearly now if you do, and then wait for me to
4 call on you to speak. And I will wait 30 seconds for people
5 to unmute if anyone wants to be heard.

6 (No response.)

7 THE COURT: All right. Thank you. The 30 seconds
8 are up, and so we will go on to the contested matters.

9 Before I hear arguments on the motion for appointment
10 of an independent investigator, I have some comments regarding
11 the PSA Creditors' motion for your consideration that I hope
12 counsel will respond to in their arguments later this morning
13 concerning the PSA Creditors' motion.

14 Having read and considered the submissions on that
15 motion, I believe that this Court has subject matter
16 jurisdiction of the motion and the power to set deadlines.
17 Nevertheless, the relief sought by the PSA Creditors appears
18 to be both inappropriate and Draconian given the Oversight
19 Board's stated intention to engage in further negotiations and
20 ultimately amend the Plan of Adjustment, and given other
21 factors, such as the Oversight Board's membership turnover,
22 the political transitions that are in progress, and the
23 pandemic.

24 What I propose, and what I would like the parties to
25 discuss in their oral arguments, is an order setting a

1 deadline of February 10th, 2021, for the Oversight Board to
2 file a term sheet disclosing the material, economic, and
3 structural terms of the amended plan proposal with which it
4 intends to proceed to confirmation.

5 The Court will expect good faith negotiations by the
6 Board and all relevant stakeholders on the development of such
7 an amended plan. The terms of the Plan will, thus, have to be
8 on the transition period agenda of the incoming Commonwealth
9 Governor, as well as that of the outgoing administration, and
10 the new members of the Oversight Board will have to work
11 quickly and cooperatively to keep the project going at speed.

12 The term sheet would have to be accompanied by a
13 proposed timetable for the filing of a formal proposed amended
14 plan and disclosure statement, discovery and litigation
15 concerning the disclosure statement, solicitation and voting,
16 and confirmation proceedings. I invite the parties to make
17 this proposed structure the focus of their remarks, although I
18 am, of course, prepared to hear, within the previously
19 announced time limits, whatever arguments the parties believe
20 are pertinent.

21 And now we will turn to argument on the motion for an
22 independent investigation. That is National Public Finance
23 Guarantee Corporation's Motion for Independent Investigation,
24 which was filed as Docket Entry No. 14450 in Case No. 17-3283.
25 And we have a total of 60 minutes allotted for argument,

1 beginning with 15 minutes by counsel for National.

2 Counsel for National? Mr. Kasowitz, or Mr. Shiff,
3 would you please unmute on both the computer and your phone
4 and announce yourself?

5 MR. KASOWITZ: Your Honor, can you hear me? We're
6 trying to unmute.

7 THE COURT: I can hear you now.

8 MR. KASOWITZ: Thank you very much. Good morning,
9 Your Honor. It's Marc Kasowitz for National Public Finance
10 Guarantee Corporation.

11 Your Honor, it's undisputed that certain of the hedge
12 funds that are involved in this proceeding were actively
13 trading in Commonwealth bonds at the same time that they were
14 engaged in a confidential mediation which sought, among other
15 things, to determine the value of those very same bonds. It's
16 also undisputed that it would have been improper for those
17 hedge funds to engage in that trading using confidential
18 information that they learned during the mediation.

19 The hedge funds' supplemental Rule 2019 Disclosures
20 raise very serious questions, in our view, about whether that
21 is exactly what happened here. And, Your Honor, those
22 concerns have not been allayed. If anything, they've only
23 been heightened by the hedge funds' objections to this motion.

24 Here are some examples of the trading that the hedge
25 funds have engaged in that are potentially troubling. In July

1 2019, just days after the initial PSA was announced, Silver
2 Point, which is a member of the Ad Hoc Group of Constitutional
3 Debtholders, held over 50 million dollars in the 2014 series
4 of late vintage GO bonds. By early February 2020, before the
5 new PSA was announced, Silver Point had increased its position
6 to nearly 300 million dollars. That's a six-fold increase,
7 Your Honor. And, obviously, the treatment of those bonds was
8 one of the principal subjects of the mediation.

9 Sculptor Capital, which is a member of the QTCB
10 Group, in September 2019, before the mediation, didn't own any
11 late vintage 2014 GO bonds. By February 18, 2020, after the
12 new PSA was announced, Sculptor owned approximately 110
13 million dollars of those bonds. Over the same time period,
14 Sculptor also doubled its holdings of the late vintage 2012 GO
15 bonds from about 40 million to about 80 million dollars.

16 GoldenTree, a member of the LCDC Group, increased its
17 2014 late vintage GO bond holdings five-fold, from about 12
18 million dollars in August 2019, before the mediation began, to
19 over 60 million dollars in February 2020.

20 Overall, Your Honor, from January 2019 to June 2020,
21 based on their own disclosures, members of the hedge fund
22 groups increased their positions in GO and PBA bonds from 5
23 billion to 7.7 billion dollars, a 53 percent increase.

24 Your Honor, these hedge funds were buying up these
25 bonds when they and the other participants in the confidential

1 mediation were negotiating how the bonds, in particular the
2 late vintage GO bonds, would be treated in the new PSA. And
3 what they were negotiating and agreeing to, negotiations that
4 were, by this Court's Order, required to be confidential, was
5 treatment of those bonds that was dramatically better than the
6 way they were treated in the initial PSA.

7 This has raised questions not just for our client,
8 but also for many others, including other parties in this case
9 and members of Congress. Your Honor, we respectfully submit
10 that the best, most efficient way to deal with what appears on
11 its face to be potential serious misconduct is to order a
12 prompt investigation by an independent, objective nonparty.
13 Someone who doesn't have any stake in the outcome here.

14 It makes sense to do that now rather than wait for
15 the confirmation, as the hedge funds would prefer. First, it
16 would ensure an objective evaluation of the facts sooner
17 rather than later. Second, it would provide full disclosure
18 before the mediation is concluded, which would be valuable
19 information for the participants in the mediation. And,
20 third, it could help avoid protracted discovery and motion
21 practice at the confirmation stage, and enable the
22 Commonwealth to re-enter the capital markets more quickly.

23 The hedge funds --

24 THE COURT: Mr. Kasowitz --

25 MR. KASOWITZ: Yes.

1 THE COURT: -- I have a question for you.

2 MR. KASOWITZ: Of course.

3 THE COURT: If your inferences that there was
4 improper trading on inside information, notwithstanding
5 various blow-outs, are true, who would have been harmed as a
6 result? Because it seems to me that if it is the municipal
7 bond market participants generally, that sort of alleged
8 misconduct in the securities market would be squarely within
9 the purview of securities regulators. And if the trades were
10 among the hedge funds themselves, as the respondents to the
11 motions generally allege, with some exceptions, why should
12 Puerto Rico pay to determine whether one of them took
13 advantage of another?

14 And, finally, in the context of confirmation, to the
15 extent you say that this makes for an unfair proposal, there
16 are opportunities to make specific allegations about
17 unfairness of the proposal and litigate those in the context
18 of confirmation. So why should the Commonwealth fund
19 essentially a securities market investigation that may or may
20 not have a proper factual basis?

21 MR. KASOWITZ: Yes, Your Honor. Thank you. I think
22 there are two reasons. First, I think that there is -- our
23 concern is that there's a taint on the overall process here.
24 The mediation is a critical process, and critical process for
25 resolving all of these parties' interests. And if --

1 THE COURT: A taint on the process -- just a moment.
2 A taint on the process because you think bad people are
3 involved, or is there some specific distortion of the now
4 publicly disclosed economics that will be set up for
5 litigation in connection with the confirmation process?

6 MR. KASOWITZ: First of all, Your Honor, just to be
7 clear, we're not -- we are not criticizing the mediation
8 process, and we're not criticizing the mediation team members.
9 To the extent that we've had the opportunity to review
10 disclosures and the like, the concern that we have, and that
11 others have as well, is that there has been some trading by
12 certain parties based on information that was supposed to be
13 confidential. And we think that that taints the overall
14 process and that that -- and that that casts a potential cloud
15 on the interests of the individual creditors here for these
16 bonds, which is not a good thing for the overall resolution of
17 the Commonwealth's issues.

18 The reason that we think that this is a better
19 mechanism, that the appointment of an independent investigator
20 is a better mechanism than waiting until confirmation is that
21 it can be done, we believe, relatively quickly, efficiently,
22 by someone who doesn't have any stake in the matter, rather
23 than waiting for -- and it can be done sooner, in order to
24 clear up and clarify any potential taints. And rather than
25 waiting for confirmation, which could lead to very broad

1 discovery by lots of different -- by lots of different
2 parties, and potentially protracted motion practice over that
3 discovery, we just think that, under the circumstances, it can
4 be done cheaper now; it can be done effectively now; and it
5 can avoid a taint sooner; and that the relatively small amount
6 of cost would outweigh the -- would outweigh the -- that the
7 benefits to everyone, and to the process, and to the Court,
8 would outweigh the relatively small amount of cost that would
9 be involved.

10 THE COURT: Thank you. Please proceed.

11 MR. KASOWITZ: So the hedge funds here, Your Honor,
12 oppose an investigation. I'm not sure exactly why they do,
13 because if what they -- if their claim is that they've had
14 absolutely nothing -- done absolutely nothing wrong in
15 connection with their trading, then they shouldn't have any
16 problem having someone independent confirm that.

17 They make several arguments. We don't think that any
18 of the arguments are availing here. First, they all deny
19 having traded securities with the use of confidential
20 information. Some of them, while they admit that they did a
21 lot of trading during the mediation, claim that it was done
22 during so-called unrestricted periods after so-called
23 cleansing materials were publicly released. Others, like
24 Sculptor, claim that most of their trades were done after the
25 new PSA was announced. And others admit that they traded

1 during the so-called restricted periods, but procured big boy
2 disclaimers, which they claim mean that they didn't violate
3 any insider trading laws.

4 These hedge funds want everyone, including this
5 Court, to take their word for it that they didn't do anything
6 wrong; but, in fact, we think that the explanations that
7 they've proffered in their objections raise more questions
8 than they answer. Although the hedge funds point to
9 unrestricted time periods, cleansing materials and other
10 disclosures, they -- all of their objections have avoided the
11 really -- really the key question here, Your Honor, which is
12 whether they were trading using confidential information that
13 they had concerning what was being discussed at the mediation
14 itself.

15 And not to put too fine a point on it, if the
16 discussions, whether formal or informal, among the parties at
17 the mediation signaled that the late vintage bonds were going
18 to receive more favorable treatment in the new PSA, did any
19 hedge funds trade on that information? None of that, none of
20 that was disclosed in any of the cleansing materials that
21 we're familiar with. All of that needs to be addressed in an
22 investigation.

23 Second, the LCDC Group argues that their trading is
24 permitted under the explicit terms of the Mediation Agreement.
25 And while it's true that the Mediation Agreement did not

1 prohibit trading by the participants, it also explicitly
2 reminded the participants that any trading needed to be done
3 in compliance with applicable securities laws. Most
4 importantly, the Mediation Agreement does not permit trading
5 using confidential information and breach of the Court's
6 confidentiality orders, and that's what's at issue here.

7 Now, Your Honor, one thing I should have said -- I'm
8 sorry. The third argument advanced by the hedge funds is that
9 the Court lacks the authority to order an investigation. We
10 disagree, Your Honor. The Court has the inherent power to
11 enforce its own orders, here the Mediation Order and the
12 Supplemental Confidentiality Order, and to protect the
13 inherent integrity of this proceeding. And if there were any
14 doubt, which there shouldn't be, that should be resolved by
15 Section 105 of the Bankruptcy Code.

16 Fourth, the hedge funds argue that an investigation
17 would be too expensive, but that the hedge funds shouldn't be
18 heard to complain that it's too expensive to investigate their
19 alleged misconduct. We believe, as I've said before, that an
20 effective investigation could be conducted efficiently and
21 reasonably, and that the benefits of assuring the integrity of
22 the mediation process would be well worth the cost, which we
23 think would be limited and reasonable.

24 Now, Your Honor, the hedge funds say they've done
25 nothing wrong, and perhaps that's right, but given what we

1 already know and the serious issues that have already been
2 raised, we believe that a prompt, independent investigation is
3 the most effective and efficient way to resolve these issues.
4 Respectfully, Your Honor, we believe our motion should be
5 granted. Thank you.

6 THE COURT: I have a question for you. One of your
7 proposals is that the Court direct the U.S. Trustee to
8 undertake the investigation. What authority do you believe
9 the Court has to direct another branch of government, the
10 Department of Justice, to conduct an investigation where
11 section 307 is not applicable in this case, and I certainly
12 don't have control over the budget of the Department of
13 Justice?

14 MR. KASOWITZ: I believe that -- we believe, Your
15 Honor, that you have it within the inherent power of your
16 office as an Article III Judge. There's a -- in the decision
17 *Neiman Marcus Group*, the United States Trustee performed a
18 similar investigation, so we think that you have that
19 authority.

20 THE COURT: Section 307 applied --
21 (Sound played.)

22 THE COURT: -- in *Neiman Marcus*, and that provision
23 is not incorporated into PROMESA.

24 MR. KASOWITZ: Understood, Your Honor.

25 THE COURT: And the facts were very different.

1 That involved, I think, a committee that the U.S. Trustee had
2 appointed, didn't it?

3 MR. KASOWITZ: Yes, Your Honor. But we -- look, we
4 believe that the Court has inherent authority, and certainly
5 the authority to enforce its own orders, both in terms of the
6 Mediation Order and the confidentiality orders and the like.
7 And so whether it's a third party that has had no dealings
8 with respect to this, or whether it's the U.S. Trustee -- and
9 if the U.S. Trustee accepted the appointment and the
10 designation, that would solve any statutory issues here.

11 (Sound played.)

12 THE COURT: All right. It seems the time is up.
13 Thank you so much, Mr. Kasowitz.

14 And now we will turn to counsel for the Committee.

15 MR. ARRASTIA: Good morning, Your Honor.

16 THE COURT: Good morning.

17 MR. ARRASTIA: John Arrastia on behalf of the
18 Committee. Thank you for your time.

19 First off, the Committee believes that this is not
20 something that can be characterized as a two or three party
21 dispute between some parties and the bondholders. These
22 issues address the fundamental integrity of the Title III
23 proceedings, and those proceedings are predicated on concepts
24 of good faith, fairness and equity.

25 In her Congressional testimony, Ms. Jaresko of the

1 Oversight Board was asked by Congress about insider trading
2 and if the Board had done anything. And she testified, No.
3 We are not investigating them. They are in the hands of the
4 Court and the mediator.

5 In her follow-up testimony, written testimony, she
6 identified the 2019 disclosures as one of the practices
7 employed to deter insider trading. And based on those 2019
8 Disclosures, the Committee joins in National's request. It
9 hasn't reached the same conclusions, but an independent
10 evaluation highlights questions that merit further
11 investigation in the Committee's view.

12 (Sound played.)

13 MR. ARRASTIA: Very simple example.

14 THE COURT: That means two minutes are left. Yes.

15 MR. ARRASTIA: Thank you. That means that -- one
16 example, the 2014 General Obligation Bonds. In 2019, the
17 Oversight Board sought to disallow claims on that series of
18 bonds. The only public information of consequence was the
19 January Omnibus Objection that included those bonds, as well
20 as the September 27, 2019, Plan of Adjustment. That still
21 would disallow claims based on that bond, but the Oversight
22 Board would settle for 35 percent. That's the range, that's
23 the elements of common knowledge, public knowledge.

24 But nonetheless, within that five-month period, just
25 before the September PSA, to the Amended PSA in February of

1 2020, certain members, not all, but certain members of LCDC
2 and the Ad Hoc Group of Constitutional Debtholders increased
3 their holdings in just that one series of bonds by 354 million
4 dollars. Meanwhile, the price increased 22 and a half
5 percent.

6 If you go back to the earlier 2019 disclosure date,
7 the numbers get bigger, and the increase in just that one
8 series of bonds almost doubled. It grew 91 percent, 621
9 million, and the price increased in seven or nine months,
10 depending on the disclosure date, 44 percent.

11 Meanwhile, we know that mediation was ongoing, and
12 settlement proposals were being discussed and exchanged. And
13 we know that because certain time records have been publicly
14 disclosed, and it identifies that.

15 (Sound played.)

16 MR. ARRASTIA: So we knew that was happening.
17 Certainly, there's enough to ask questions necessary to
18 confirm the integrity of the process and comply with equitable
19 considerations of these proceedings. And irrespective of any
20 framework the Court may fashion today, the Committee stands by
21 to assist the Court in any further investigation or
22 evaluation.

23 Thank you for your time, Your Honor.

24 THE COURT: Thank you, Mr. Arrastia.

25 Now we turn to the motion opponents. I have, first,

1 the LCDC for ten minutes.

2 MR. KIRPALANI: Good morning, Your Honor. It's
3 Susheel Kirpalani.

4 THE COURT: Good morning, Mr. Kirpalani.

5 MR. KIRPALANI: Good morning. For the record, on
6 behalf of the Lawful Constitutional Debt Coalition, or the
7 LCDC, Susheel Kirpalani from Quinn Emanuel.

8 Judge, the members of the LCDC were the first
9 bondholders of Puerto Rico to suggest a compromised path
10 forward that didn't require cutting pensions, didn't impose
11 austerity, and did not debate the Oversight Board's
12 determinations of how much is needed to ensure citizens have
13 essential government services.

14 We entered this case in March of 2019, and the way we
15 saw it, citizens of Puerto Rico were victims of irresponsible
16 fiscal decisions made over decades by politicians with a core
17 network of partners. National was clearly one of those
18 partners, and despite the self-serving spin in its motion and
19 the tone it takes this morning, National is not the kind of
20 long-term partner that Puerto Rico needs today.

21 In June of 2019, the Oversight Board announced an
22 initial PSA supported by us as anchor tenants, along with
23 another group of creditors. The structure and settlement
24 contained in that plan proposal did not garner enough support
25 to quiet the noise of litigation. And by late July 2019, this

1 Court Ordered all major creditors into mediation, to be
2 overseen by a mediation team of federal judges.

3 A new PSA came out of that mediation in February
4 2020, and that proposal garnered substantial support.
5 Approximately 60 percent in amount of constitutional debt
6 supported the deal. National was not among them, however. We
7 asked National to join us, and they refused. That's because
8 National didn't like the idea of haircutting constitutional
9 debt to the level that we agreed, because then National would
10 have to make up the difference to its policy holders,
11 including all the post bankruptcy interest payments.

12 And to make things worse for National, the current
13 Plan contemplates very little money to repay the junior rung
14 clawback debt it insured. If the current Plan became
15 effective, National would be left holding the bag for any
16 amounts not paid by Puerto Rico to bondholders, and that bag
17 is so heavy that it likely tips National into insolvency. So
18 National will stop at nothing to prevent the new PSA plan or
19 any structurally similar one from going forward. And so here
20 we are.

21 National's motion charges some very heavy
22 allegations, but are very light on the facts, or even a
23 coherent thesis. Despite the clear terms of the Mediation
24 Orders themselves, and despite being one of the original
25 signatories to the Mediation Agreement, National ignores the

1 actual terms of these documents when it argues that members of
2 the LCDC somehow violated them.

3 In paragraph one of National's motion, National
4 alleges two things to justify the relief it wants: One, the
5 Court's confidentiality orders may have been violated; and,
6 two, that while participating in Court-Ordered mediation,
7 certain hedge funds, creditors may have engaged in improper
8 trading. Based on these allegations, National then says an
9 investigation is appropriate, and I quote, because such
10 conduct would have materially undermined and negatively
11 impacted the mediation that resulted in the new PSA, or some
12 similarly structured forthcoming agreement.

13 Desperate to shift the focus from the fact that
14 National itself is not among the 60 percent of Constitutional
15 Debtholders that agreed to compromise, National adopts the
16 familiar playbook of saying the ones that agreed to haircuts
17 are not the original GO and PBA bondholders. But National
18 cannot explain the relevance of that assertion.

19 If members of the LCDC are financially able and
20 willing to agree to compromise and provide haircuts and
21 savings to the Commonwealth of Puerto Rico under a plan, it
22 does not mean the haircuts are bad for the Commonwealth. They
23 are just bad for National.

24 Your Honor, we know that sunlight is the best
25 disinfectant, so we had each member of the LCDC disclose and

1 certify the details of its holdings before and after each
2 phase of negotiations with the Oversight Board. From our
3 papers, to summarize, no member of the LCDC traded in any
4 constitutional debt during the negotiations that led up to the
5 initial PSA between March and June of 2019. This is the
6 original agreement that created the framework for paying early
7 vintage bondholders more than late vintage bondholders, for
8 capping early vintage bondholders, and paying late vintage
9 bondholders ahead of clawback bonds and general unsecured
10 creditors.

11 As the Court knows, the level of support for that
12 initial PSA was limited. The significant holders of late
13 vintage bonds did not think the proposal was fair, and the
14 Court Ordered mediation in July of 2019 and required that the
15 holders of -- late vintage bondholders be included this time.

16 While Your Honor Ordered the mediation in late July,
17 the mediation didn't actually begin for a couple of months,
18 and it didn't begin at the same time for every creditor or
19 every creditor group. In fact, this is why the Rule 2019
20 statements are not the best way to understand the economic
21 positions of holders at the beginning of each mediation
22 session. But I want to explain why that doesn't suggest any
23 wrongdoing.

24 The timing of when we filed Rule 2019 statements is
25 dictated by the rule itself and by this Court's Rule 2019

1 orders, not by a mediation protocol. And it's important to
2 remember in the sense that neither the Board nor the mediation
3 team made any public statements as to when mediations were to
4 begin and for whom. But that's not to say the Board didn't
5 know the specific holdings of the participants in the
6 mediation. To the contrary, the Board required creditors to
7 provide CUSIP level information so the Board would know
8 exactly which bonds it was dealing with, ensuring transparency
9 into creditor holdings throughout the negotiations with the
10 issuer.

11 As was certified by each institution as to itself in
12 our Objection, five of our seven members of the LCDC did not
13 buy or sell any constitutional debt securities while
14 participating in mediation. And as they disclosed through
15 certifications to our Objection, there was nothing nefarious
16 about the isolated transactions that occurred by two of the
17 LCDC while in mediation between October 2019 and February
18 2020.

19 All four of the parties involved in these isolated
20 trades were sophisticated investors who had executed the
21 Mediation Agreement. These were not trades on the open
22 market, and the trades were conducted in compliance with the
23 mediation protocol, with no breaches of confidentiality.
24 Three of the four parties were signatories to the initial PSA
25 at the time of the transactions.

1 So the result, Judge, is that the bonds that were
2 already locked up by the initial PSA merely changed hands to
3 another signatory who had agreed to the same compromised
4 treatment already. And the fourth party was an active
5 participant in the then ongoing mediation, and sold some bonds
6 to another participant. Ultimately, all four of these
7 institutions negotiated and executed the new PSA, supporting
8 the Board's proposed compromise of how all GO and PBA bonds
9 would be treated.

10 That's it. That's the sum total of trades done by
11 members of the LCDC while engaged in mediation. This is all
12 set forth in detail, accompanied by certification by the
13 institutions.

14 So having certified the facts --

15 (Sound played.)

16 MR. KIRPALANI: -- the same way the holdings are
17 certified in Rule 2019 statements to begin with, National
18 changes the basis for the motion in its Reply Brief. In its
19 Reply, National now says an investigation is needed because
20 it's possible that even when there was no mediation, the
21 trading could have been improper.

22 The inconvenient truth is that the actual facts don't
23 fit National's original narrative. National wanted to show
24 parties were massively trading during mediation, but that's
25 not true. And it wanted to say members of the LCDC were

1 taking positions in court that were contrary to their economic
2 interest, and that's not true.

3 So now National resorts to saying any creditors who
4 participate in mediation may find themselves prohibited from
5 buying or selling bonds even after the mediation is over.
6 Why? Because the issuer may not have effectively cleansed the
7 mediation participants by disclosing all the needed
8 information.

9 Judge, National's position would prohibit any party
10 that has ever participated in mediation from ever buying or
11 selling bonds again, irrespective of whether or not mediation
12 is ongoing. National's new basis for relief requires the
13 participants to prove a negative. It creates an
14 insurmountable problem for any bankruptcy case where mediation
15 is ordered, including future mediations in this case.

16 How are creditors supposed to participate in
17 mediation if they can't rely on the rules established for the
18 mediation and the issue of disclosure of material, nonpublic
19 information? The answer, of course, is that they can't rely
20 on those rules. And if they can't rely on those rules, they
21 just won't participate. And that would suit National just
22 fine, because National does not want to see Puerto Rico emerge
23 from bankruptcy unless National is paid in full. That's what
24 this is about.

25 The economic interests of the members of the LCDC are

1 all publicly disclosed. The size of the two transactions that
2 took place among four sophisticated parties during mediation
3 is out, also, now publicly disclosed.

4 (Sound played.)

5 MR. KIRPALANI: And the world can see it did nothing
6 to undercut the LCDC's overall economic interests, Your Honor.

7 THE COURT: Thank you.

8 MR. KIRPALANI: While National disagrees that its
9 junior clawback bonds should receive a very small recovery,
10 and it doesn't think that Constitutional Debtholders should
11 discount or haircut at all, it should register those
12 disagreements as objections to a plan, not by maligning the
13 entire mediation process --

14 THE COURT: Your time is up.

15 MR. KIRPALANI: -- and chilling all participation in
16 the future, Your Honor.

17 THE COURT: Mr. Kirpalani, your time is up.

18 MR. KIRPALANI: Yes.

19 THE COURT: Thank you very much.

20 MR. KIRPALANI: Thank you, Your Honor.

21 THE COURT: I will now hear from counsel for the
22 Constitutional Debtholders, Ms. Foudy.

23 MS. FOUDY: Good morning, Your Honor.

24 THE COURT: Good morning.

25 MS. FOUDY: Theresa Foudy of Morrison & Foerster on

1 behalf of the Ad Hoc Group of Constitutional Debtholders.

2 I would just note, I notice on the Court Solutions
3 dashboard that it says we represent Fir Tree, so I just
4 wanted -- while, Fir Tree is a member of the Group, we
5 actually represent the Ad Hoc Group of Constitutional
6 Debtholders.

7 Without repeating all of what Mr. Kirpalani said, I
8 would just note for the record that the Constitutional
9 Debtholders join in the arguments of the Lawful Constitutional
10 Debt Coalition.

11 And I would like to address the lack of authority for
12 the relief that National Public Finance Guarantee Corporation
13 seeks. While National relies upon the Court's inherent power
14 to enforce its own orders, National's allegations, on their
15 face, do not state a violation of the Court's Mediation Order
16 or the Court's Supplemental Confidentiality Order. The
17 Court's Mediation Order, as well as the Court's Supplemental
18 Confidentiality Order, which was issued to address the leaking
19 of confidential mediation information to the press, both
20 require that mediation information be kept confidential.
21 Neither Order says one word about trading.

22 National's motion conflates disclosing confidential
23 information with trading, but those are two separate things.
24 National's motion is not about enforcing the Court's orders
25 prohibiting the disclosure of confidential information.

1 Rather, National's motion is about speculation that maybe,
2 perhaps, possibly securities laws could have been violated,
3 because signatories to the Mediation Agreement traded
4 securities at some point in time over the past two years, even
5 though National has presented no evidence that any of those
6 trades were done in violation of the securities laws.

7 National advocates for transparency, but the
8 Constitutional Debtholders have been transparent. The
9 Constitutional Debtholders have fully disclosed their economic
10 interests in these proceedings and how those interests have
11 changed over time in Rule 2019 statements that are likely the
12 most fulsome and comprehensive Rule 2019 statements ever filed
13 in a case.

14 In addition, in the Constitutional Debtholders'
15 Joinder to the objections to National's motion, the
16 Constitutional Debtholders both attested to their compliance
17 with the Court's Orders and disclosed what trading, if any,
18 was engaged in while participating in the mediation. While
19 National's Reply Brief dismisses those Disclosures as
20 "counsels' assurances" contained in "legal briefs," each
21 member of the Ad Hoc Group of Constitutional Debtholders
22 verified, under penalty of perjury, that the statements were
23 true.

24 National has not presented one iota of evidence to
25 Your Honor that contradicts those verified statements.

1 | Instead, the bondholders are attacked by conjecture and the
2 | blatantly flawed premise that the fact of having traded
3 | somehow equates to that trading having violated the security
4 | laws.

5 | Asking this Court to launch a securities market
6 | investigation, in spite of the complete disclosures made under
7 | penalty of perjury by the Constitutional Debtholders is a
8 | frolic and a detour that would set a terrible precedent --

9 | (Sound played.)

10 | MS. FOUDY: -- and is best avoided.

11 | Unless Your Honor has any questions, the Ad Hoc Group
12 | of Constitutional Debtholders would rest on the papers and ask
13 | this Court to deny National's motion.

14 | THE COURT: Thank you, Ms. Foudy. I have no
15 | questions for you.

16 | MS. FOUDY: Thank you, Your Honor.

17 | THE COURT: So now we will turn to counsel for QTCB
18 | for five minutes. Mr. Mayr.

19 | MR. MAYR: Good morning, Your Honor. Kurt Mayr of
20 | Morgan, Lewis for the --

21 | THE COURT: Hi.

22 | MR. MAYR: -- QTCB Noteholder Group. Can you hear
23 | me?

24 | THE COURT: Yes. I mispronounced your name. Hello,
25 | Mr. Mayr.

1 MR. MAYR: No problem. It happens often.

2 I guess, Your Honor, I will begin with one of
3 National's counsel's first statements, which is that it was
4 undisputed that there was trading occurring during mediation.
5 We, the QTCB Noteholder Group, absolutely dispute that.

6 We have filed with the Court our Response with a
7 detailed timeline of our holdings, when we were in mediation
8 with confidential mediation information, when and -- how and
9 when the holdings changed, and when trading occurred. And
10 when you look at that, you can see that, like any large public
11 structuring case, the negotiation here involves very specific
12 rules of the road that parties whose business it is to trade
13 in bonds, and that have fiduciary duties to their investors to
14 maximize value, will, when necessary, agree to restrict their
15 ability to trade, engage in negotiations with a pre-negotiated
16 exit from the restriction in trading through appropriate
17 cleansing. And you can see the road map for what happened
18 here in our filing, and you can see that no trades in the QTCB
19 Noteholder Group occurred during any period while they had
20 information in mediation that had not been cleansed.

21 Now, I think National claims it's protecting the
22 integrity of the process. I actually think this is a
23 full-blown attack on the integrity of the mediation process.
24 National asserts that the Board's cleansing disclosures are
25 insufficient and that it needs to investigate, quote, all

1 information obtained formally or informally as a result of the
2 mediation, and, at another point, suggests that any
3 conversations at any time between investment funds are
4 relevant as well.

5 This is a blatant invasion into the mediation process
6 that would permit National discovery into all discussions in
7 the many months and the very long and hard days of mediation
8 that, for important policy reasons, are protected by mediation
9 privilege. The expansive nature of the investigation belies
10 National's disingenuous assurance that this is going to be a,
11 quote, quick and easy and relatively inexpensive process.
12 They literally say they need to hear about everything that was
13 ever said to anyone during mediation in order to satisfy their
14 investigation.

15 Granting this motion would have an incredible
16 chilling effect on mediation, because all confidential
17 mediation discussions would be subject to the risk of attack
18 by any party unhappy with the mediation result.

19 Now, I take Your Honor's question about standing at
20 -- you know, National does not claim that it sold bonds or
21 bought bonds from any investment fund that supposedly traded
22 improperly. It doesn't have standing to pursue that. The
23 only standing it has to pursue is, you know, issues related
24 directly to this process. And so they really point to two
25 things.

1 (Sound played.)

2 MR. MAYR: One, the power of the Court under 105
3 that, as has been said, it only relates to confidentiality,
4 and -- though they don't make a single allegation of any
5 confidential information being disclosed. Then they speak to
6 the integrity of the Court, the integrity of the process, but
7 they're not seeking to protect the integrity of the process.

8 Congress carefully crafted rules and procedures to
9 protect the integrity of this process. Rule 2019 applies.
10 Your Honor has augmented 2019, and we have complied. And
11 that's the level of disclosure that applies to these sorts of
12 issues in this case, and we have complied at all times, above
13 and beyond, including in our Opposition to this motion.

14 Congress provided confirmation protections, the good
15 faith requirements of the Plan, rote designation, equitable
16 subordination rights. These are all things that National
17 alludes to and will be available to National when ripe. And
18 now, we might not know what plan is actually going to be
19 pursued and what will be ripe until February 21st, 2021.
20 Clearly, the issues they raise today are not ripe with respect
21 to any particular plan until we know more.

22 And, finally, what they really seek is an examiner.
23 Congress didn't give them that. What they're really asking
24 Your Honor to do is to use 105 to create an investigatory
25 power that wasn't provided by Congress.

1 I also think it's notable that National really stands
2 alone here. If this outrageous conduct was true -- joinders
3 abound in this case when parties agree with others' requests
4 of the Court. National and the other monolines frequently
5 join in each other's pleadings. Other than the UCC's tepid,
6 half-hearted joinder here, no other party has joined in this
7 motion, which speaks strongly to the --

8 (Sound played.)

9 MR. MAYR: -- submission. I'll conclude there, Your
10 Honor.

11 THE COURT: Thank you, Mr. Mayr.

12 MS. NG: Judge, it's Lisa. Judge, I'm sorry. It's
13 Lisa. I just got an e-mail from Matthew, from Matt, from the
14 DE's office saying that the AT&T -- they're reporting issues
15 with the AT&T conference and AT&T web manager. So I just
16 wanted to let you know, and let the AT&T participants know
17 also, that I'm keeping an eye on everything. But hopefully
18 this is something that doesn't affect us, but it may just
19 affect us, so I just wanted to let you know.

20 THE COURT: I saw that message as well. And I think
21 we have someone from our team listening through the AT&T line.
22 Have you been able to verify that they are still on and can
23 hear?

24 MS. NG: Yes, I will check with Eric.

25 THE COURT: Okay. I'll wait until you've been able

1 to verify with him.

2 MS. NG: Yes. Eric says he's fine there so far.

3 THE COURT: Okay. So it sounds like our AT&T line is
4 still functioning.

5 MS. NG: Yes.

6 THE COURT: So we will continue.

7 MS. NG: Sorry to interrupt. I'm sorry, Judge.

8 THE COURT: Oh, no. It's nothing to be sorry for.

9 We have to make sure everything is working for everyone. So
10 thank you, Ms. Ng, for your vigilance on that.

11 The next speaker is Mr. Stancil for three minutes.

12 MR. STANCIL: Good morning, Your Honor. Mark Stancil
13 of Willkie, Farr & Gallagher for the Ad Hoc GO Group. I'll be
14 very brief. Good morning.

15 We fully agree with the other PSA parties that
16 National's motion is completely lacking in merit. As we
17 explained in our Opposition, no member of the GO Group made
18 any trades during any restrictive period, which is more than
19 enough basis to reject National's motion summarily.

20 I'd like to very briefly emphasize just two
21 additional points. First and foremost, the very allegations
22 National has made, no matter how meritless and easily
23 disproven, are severely damaging to the targeted firms.

24 As the Court is well aware, our clients are closely
25 regulated and follow strict trading protocols. National's

1 | very casual suggestion that our clients flouted all of those
2 | rules and regulations does serious harms to our clients'
3 | businesses. It's no different from a lawyer publicly accusing
4 | another lawyer of egregious ethical violations without
5 | foundation.

6 | Suppose a lawyer shows up to the courthouse one
7 | morning driving a new car, and opposing counsel publicly urges
8 | the Court to launch an investigation into whether the lawyer
9 | may have misappropriated client funds to buy the car. Even if
10 | the allegation is summarily and quickly disproven --

11 | (Sound played.)

12 | MR. STANCIL: -- significant damage is already done.
13 | And I think the old saying goes something like a lie can
14 | travel halfway around the world while the truth is still
15 | lacing up its boots, and that's absolutely the case here.

16 | The second point I wanted to emphasize is that the
17 | damage is particularly egregious with respect to my clients,
18 | who were dragged into National's motion, despite the fact that
19 | their Rule 2019 Disclosures do not even fit National's already
20 | bogus theory.

21 | Your Honor may recall that the GO Group's holdings
22 | actually declined during the time period that National claims
23 | PSA Creditors were improperly buying certain bonds. While --
24 | rather than acknowledging that disconnect, National casually
25 | tosses in a footnote in their motion announcing that perhaps

1 our client's decrease in holdings is also suspicious, it says.

2 And then National speculates, without any basis
3 whatsoever, that PSA Creditors may have been, "working
4 together to reallocate these bonds among themselves." This is
5 pure conspiracy theory nonsense, and the fact that National
6 continues to cling to it is further proof that this motion is
7 a self-serving attempt to disrupt the PSA, and it's not a
8 manifestation of any legitimate concern about the integrity of
9 the process.

10 And National may not care that its tactics are doing
11 significant harm to the firms that it has nonchalantly accused
12 of serious wrongdoing, but this Court should not countenance
13 National's abuse of the judicial forum. We respectfully urge
14 the Court to deny the motion.

15 Thank you, Your Honor.

16 THE COURT: Thank you, Mr. Stancil.

17 Next I have counsel for Sculptor, Mr. Wilson, for
18 three minutes.

19 MR. WILSON: Good morning, Your Honor. Thad Wilson
20 from King & Spalding on behalf of Sculptor Capital.

21 National brought its motion without a shred of
22 evidence and based purely on suspicion, suspicion, as you've
23 heard this morning, driven by its opposition to the Plan.
24 National's Motion and Reply offer the Court no facts, just
25 hunches, and very biased hunches at that. That is

1 specifically true with respect to its false and misleading
2 portrayal of trading by Sculptor Capital's funds.

3 Sculptor has conclusively demonstrated that it did
4 not engage in any trading that violated this Court's orders or
5 any other trading restrictions, and there is no basis
6 whatsoever for the relief National requests. Indeed, in its
7 Motion and Reply Brief, National does not point to a single
8 instance where Sculptor violated a Court order. National does
9 not point to a single instance where Sculptor violated any
10 agreement. And most certainly, National's motion has not
11 shown Sculptor has violated any applicable law.

12 Rather, National, without a shred of evidence, and
13 without even a reasonable basis for its beliefs, lobbed in a
14 Hail Mary and tried to mislead the Court with a chart showing
15 that Sculptor traded in 2012 and 2014 bonds during times
16 Sculptor had or might have had confidential information. That
17 chart is in National's motion.

18 (Sound played.)

19 MR. WILSON: It was based on incomplete data, and
20 National filled in the blanks with its imagination. We caught
21 them misleading the Court. We pointed it out in our Response,
22 and now National is extremely defensive about it, as the Court
23 can see from National's Reply Brief.

24 To be clear, Sculptor has done nothing wrong. It has
25 followed its stringent compliance program, and only traded

1 after a cleansing event occurred in a press article relating
2 the cleansing materials was published by the likes of Reorg
3 Research and other news outlets.

4 In our briefing and the demonstrative chart we
5 provided to the Court for today's hearing, that's at Docket
6 No. 14937, Sculptor explained its trading of all GO bonds, not
7 just the 2012 and 2014 bonds. There is no equivocation.
8 Sculptor's Response addresses all of its trades.

9 As the chart demonstrates, Sculptor only traded after
10 a cleansing event occurred, and usually days after the
11 cleansing event occurred, including after the announcement of
12 the Amended PSA on February 9th. We merely highlighted the
13 2012 and 2014 bonds in a second chart in the Response, because
14 that's where National most blatantly mislead the Court with a
15 chart showing Sculptor trading in those bonds, when, in
16 reality, Sculptor was not trading in them at all.

17 In the Reply, National focuses only on trading by
18 others. They point to nothing Sculptor has even arguably done
19 wrong. But if the Court decides to indulge National's farce
20 and its blatant attempt to derail the confirmation process,
21 there is no justification for including Sculptor in the
22 investigation.

23 (Sound played.)

24 MR. WILSON: And we ask the Court to deny National's
25 motion.

1 THE COURT: Thank you, Mr. Wilson.

2 Next I have Mr. Bienenstock for the Oversight Board
3 for four minutes.

4 MR. BIENENSTOCK: Good morning, Your Honor. Martin
5 Bienenstock of Proskauer Rose, LLP, for the Oversight Board.

6 THE COURT: Good morning.

7 MR. BIENENSTOCK: I have a few points. I'll try to
8 make them very quickly.

9 Number one, out of respect for the members of
10 Congress who sent the letter to the New York Attorney General
11 asking for investigation, and out of an overall concern for
12 the integrity of the process, the Board fully supports the
13 reference by these Congressional members to the New York
14 Attorney General of this matter to decide if it even warrants
15 an investigation, and if it does, a full investigation, and
16 even prosecution if that's warranted.

17 Second, the Resident Commissioner of Puerto Rico,
18 Jenniffer Gonzalez, referred this same matter to the SEC last
19 week. Third, the Board, through my firm and my partner,
20 Hadassa Waxman, is referring this to the Department of
21 Justice -- the United States Department of Justice. Each of
22 these entities can both investigate and prosecute if that's
23 warranted.

24 And more specific -- I want to highlight that
25 National's emphasis that it wants an investigator who cannot

1 prosecute, it is highly suggestive that they want someone who
2 will think of hypothetical possibilities, create a gray area
3 with no resolution.

4 Number two, we have never filed a proposed plan that
5 would discharge one creditor's claim against another, or any
6 type of insider trading claims, and the Board doesn't intend
7 to do that. So this is really outside of the confirmation
8 process. The dots are not connected. Only the Board can
9 propose a plan.

10 To the extent that there was insider trading by
11 bondholders, their good faith is irrelevant to whether the
12 Board is proposing a plan in good faith. And as the Court
13 mentioned up front, if the settlements of the different
14 issuances of bonds are unfair, everyone can go and prove that
15 at the confirmation hearing.

16 (Sound played.)

17 MR. BIENENSTOCK: The notion that the expense should
18 not be an issue because so much has been spent on the case in
19 general, I'll actually address more about this in connection
20 with the next motion, but suffice it to say this investigation
21 would be total expense, whereas the expense consumed in the
22 cases has generated multiples of value for the Commonwealth
23 and other creditors. And I'll explain that later.

24 Additionally, we must realize that there's certainly
25 a plausible possibility that what Mr. Kirpalani and the other

1 creditors' representatives have said is totally correct. And
2 the people trying to be constructive to come up with a
3 consensual plan of adjustment should not be unfairly made
4 targets with virtually no evidence.

5 And I've actually pointed out how some of the
6 evidence is wrong. They connect dots suggesting trading
7 during a period when, in fact, the creditors are representing
8 they only traded before and after.

9 And, finally, National can't resist, it seems,
10 harking back to its contention that the Oversight Board in
11 COFINA was conflicted and could not do its job so it needed
12 independent representatives. As National should and does
13 know, we did that because we thought it was good for the
14 process. But in that very same stipulation, we reserved the
15 right to impose the settlement, and in actuality, when the
16 Commonwealth representative, the Statutory Creditors
17 Committee, backed out of the deal at the end, we did impose
18 it.

19 So there was no conflict or inability --

20 (Sound played.)

21 MR. BIENENSTOCK: -- of the Board to act as National
22 is contending.

23 Thank you, Your Honor.

24 THE COURT: Thank you, Mr. Bienenstock.

25 And now we will return to National's counsel for

1 rebuttal. I have a total of 12 minutes allocated.

2 MR. KASOWITZ: Thank you, Your Honor. Marc Kasowitz
3 for National.

4 Your Honor, it seems as if we've hit a bit of a nerve
5 here. We laid out in our papers, and in the presentation, and
6 in the argument this morning, that there's been massive
7 trading during the period of time covered by the mediation in
8 the bonds that were subject to the mediation, and that those
9 facts gave rise in a number of different places, including in
10 Congress, before our -- before our -- before we made any
11 motion, and amongst the other parties to this proceeding to
12 request for further information.

13 We made the suggestion in our motion that in order to
14 assure the integrity of this process, the entire mediation and
15 the bankruptcy proceeding, that it would be appropriate to
16 have -- and helpful to have an investigation by an independent
17 party done efficiently and quickly in order to resolve any
18 potential suspicions. The response of the various hedge fund
19 groups are as -- are as follows, and are not -- and are not
20 valid.

21 LCDC chooses to attack National and National's role
22 on the island, and with respect to this bankruptcy, claiming
23 somehow that the role that it's performed is inappropriate. I
24 don't understand what the potential -- what the possible basis
25 for that can be. National's been a long-term partner of the

1 Commonwealth. It has guaranteed billions of dollars of bonds
2 for the Commonwealth. It has made payment on those bonds when
3 the guarantees were triggered and the like. So any kind of
4 claim that LCDC makes to try to distract from what National's
5 necessary and vital role for the Commonwealth has been, is
6 really -- is really baseless.

7 And LCDC also argues that all of -- that all of their
8 trading was fine, but relies on, or necessarily relies on
9 certain unrestricted trading periods and certain purportedly
10 cleansing materials in order to support that. In order to do
11 that, as we have made clear in our papers, all of the -- all
12 of the arguments that LCDC and others have made here, where
13 they say that there have been cleansing materials which have
14 permitted whatever trading that they have decided to do, we've
15 raised the question, properly so, that those cleansing
16 materials have not, in fact, been cleansing, and that there
17 are questions about whether or not what was really discussed,
18 what was really negotiated during the mediation sessions had
19 been properly disclosed in such a way that would protect --
20 that would protect the trading that followed.

21 The reality here is that there has been a cloud
22 that's been created by enormous trading during a settlement
23 period, a confidential mediation period, in the very bonds,
24 the values and treatment of which are being discussed in the
25 mediation. And in fact, there's been a run-up in the price of

1 those bonds prior to the time that the Amended PSA was
2 announced.

3 That causes suspicions. It's caused suspicions in
4 Congress. It's caused suspicions by others. And we have
5 properly, and in a straight forward, and, frankly, in a
6 restrained way, raised the issue that the entire process and
7 mediation would benefit from an independent investigation now
8 rather than waiting until the confirmation time. And that
9 suggestion, which, if LCDC, Sculptor, QTCB and others had no
10 issue with it, had no concern about the bona fides of their
11 trading, they would have welcomed, if the issues are as cut
12 and dry as they argue that they are here.

13 Now, QTCB, during the course of its argument, said
14 something that I actually thought was sort of nothing that any
15 other party here has taken a position about. I thought that
16 counsel made the argument, and I'll be corrected if I'm wrong,
17 that it was okay to trade on confidential information, that
18 the Mediation Order and the confidentiality provisions didn't
19 prohibit that trading. I can't imagine that that is a
20 principle that the Court would endorse.

21 So, you know, from National's point of view, and
22 notwithstanding the efforts by the various hedge fund groups
23 to try to either distract from the matter at hand, or to try
24 to claim that they are being unfairly attacked, which was not
25 National's intention here, our view is that an investigation

1 done promptly and conducted efficiently would remove the taint
2 that publicly exists with respect to the massive trading that
3 has gone on in bonds which have been discussed during the
4 course of the -- during the course of the mediation. That
5 that is a necessary and important step to happen here.

6 As to the question of -- as to the point that the Ad
7 Hoc Group of Constitutional Debtholders made to the effect
8 that such an investigation would set an unwelcome precedent
9 for the future, I don't believe, we don't believe, and
10 National doesn't believe that that's the case. This trading
11 has been unusually large, in a concentrated period of time,
12 and under circumstances in which debt that had been viewed at
13 one point prior to the mediation as not having very much
14 value, increased tremendously in the market to have the same
15 value as the early vintage debt.

16 So we think that there are unique facts here
17 concerning the trading during the pendency of the mediation
18 that necessitate the attention of a -- of a fast and
19 appropriate mechanism and process to remove any taints.

20 Thank you, Your Honor.

21 THE COURT: Thank you, Mr. Kasowitz.

22 Did counsel for QTCB want to come back in and clarify
23 anything, or is there anyone else who wants to say anything?
24 I'll wait 30 seconds for people to announce their names.

25 MR. MAYR: Yes, Your Honor. You've got Kurt Mayr

1 here for the QTCB Noteholders Group.

2 THE COURT: Yes, Mr. Mayr.

3 MR. MAYR: I would like to address the comment, but I
4 would also pause to let others indicate their interest.

5 THE COURT: Well, I will let you speak, and then I
6 will pause for others.

7 MR. MAYR: Okay. I'm not sure how counsel for
8 National came up with the comments that he made. I don't
9 think anything that I said indicated that it was okay for
10 people to trade while in possession of confidential, nonpublic
11 information. And to the extent that anything I said could
12 have been construed that way, that is not what I intended.

13 THE COURT: Thank you.

14 Does anyone else wish to be heard further on this
15 motion? I'll wait 30 seconds.

16 MR. ARRASTIA: Yes, Your Honor. This is John
17 Arrastia on behalf of the Committee.

18 THE COURT: Mr. Arrastia, please proceed.

19 MR. ARRASTIA: Yes. Very briefly, Your Honor.

20 The only concern that I would point out for the
21 Court's consideration is if there is a referral to an
22 investigative authority such as the Securities and Exchange
23 Commission, or the Department of Justice, then the Court loses
24 control over those proceedings.

25 And if we do proceed toward confirmation, and, for

1 example, hypothetically, there's a confirmation in 2021, but
2 then there is, again, hypothetically, a criminal or civil -- a
3 finding of criminal or civil liability for improper conduct
4 that comes out in 2022 or 2023, then what we're going to have
5 is questions that will come up after the fact. And as I'm
6 sure the Court is aware, once a referral is made, the Court
7 has less impact and control over its ability to control the
8 process.

9 Thank you.

10 THE COURT: Well, if there really is wrongdoing in
11 the market, A, I can't prevent regulatory or prosecutorial
12 agency activity, and, B, even if I had an investigation that
13 did or did not find impropriety, there's always the risk that
14 there might be found some impropriety in the markets, so how
15 is this proposed investigation an effective prophylactic
16 against the possibility that you just framed?

17 MR. ARRASTIA: Well, I think that -- thank you for
18 the question, Your Honor. I think it appears to be really two
19 related but different issues. And I think that an
20 investigative authority does have certain responsibilities to
21 the marketplace, but I would respectfully suggest that in
22 PROMESA, there's a separate -- a separate concern, which is
23 the integrity of the process and making sure that we proceed
24 through this and through confirmation in the appropriate
25 manner that reflects the fairness, the equity, and the good

1 faith that's required of the process.

2 So I think there's two slightly different issues that
3 do have overlap. But, for example, the Securities and
4 Exchange Commission's controlled about the -- concerned about
5 the markets, and whether something happened in the markets,
6 whereas -- and the Court may not have that as an issue before
7 it, but it does have PROMESA, which is slightly different.
8 And I think that there are two slightly different issues, and
9 I think that there's two slightly different considerations,
10 and they don't overlap entirely.

11 I hope that answers the Court's question.

12 THE COURT: Thank you. I hear your response.

13 Is there anyone else who wishes to be heard briefly?
14 I'm going to wait the 30 seconds now.

15 (No response.)

16 THE COURT: All right. The 30 seconds are up. And I
17 am ready to rule on this motion. I thank counsel for their
18 submissions and for their fulsome arguments this morning,
19 which were very helpful to the Court.

20 Before the Court is the motion of National Public
21 Finance Guarantee Corporation for entry of an order directing
22 an independent investigation, Docket Entry No. 14450 in Case
23 No. 17-3283, which I'll refer to as the Motion.

24 Through the Motion, National Public Finance Guarantee
25 Corporation, which I'll refer to as National, seeks entry of

1 an order directing an independent investigation by the United
2 States Trustee or "another independent entity" into whether
3 certain participants in the Title III mediation process in
4 2019 and 2020 violated this Court's orders governing mediation
5 confidentiality, including whether those parties traded in
6 securities while in possession of confidential information
7 about or obtained during mediation.

8 The Court has jurisdiction of this contested matter
9 pursuant to Section 306(a) of PROMESA. The Court has
10 considered carefully all of the parties' submissions in
11 connection with the Motion.

12 For the following reasons, the Motion is denied. The
13 Court reserves the right to make non-substantive changes and
14 corrections in any transcription of this oral decision.

15 Neither PROMESA nor any provision of the Bankruptcy
16 Code that is incorporated into Title III explicitly authorizes
17 this Court to initiate an independent investigation along the
18 lines of the investigation sought by National. There is,
19 similarly, no statutory or other authority granting the Court
20 the power to direct the United States Trustee, which is part
21 of the United States Department of Justice, to conduct such an
22 investigation.

23 In fact, Congress excluded from PROMESA both Section
24 1104(c) of the Bankruptcy Code, which provides for the
25 appointment of an examiner to investigate "allegations of

1 fraud, dishonesty, incompetence, misconduct, mismanagement or
2 irregularity in the management of the affairs of the debtor,"
3 and Section 307 of the Bankruptcy Code, which authorizes the
4 United States Trustee to "appear and be heard on any issue."

5 Against this statutory backdrop, National relies on
6 Section 105 of the Bankruptcy Code, which is made applicable
7 in these Title III cases by Section 301(a) of PROMESA as the
8 principal legal basis for its motion. Section 105(a) provides
9 that the Court, "may issue any order, process, or judgment
10 that is necessary or appropriate to carry out the provisions
11 of" the Bankruptcy Code, and since it's incorporated into
12 PROMESA, that would be with respect to PROMESA as well.

13 The Court's equitable power under Section 105(a) is
14 not unlimited, however. As the First Circuit has held,
15 Section 105(a) may be invoked, "only if and to the extent that
16 the equitable remedy dispensed by the Court is necessary to
17 preserve an identifiable right conferred elsewhere in the
18 Bankruptcy Code." I am quoting from *In re: Jamo*, 283 F.3d
19 392, at 403, a First Circuit decision from 2002, and I omitted
20 citations.

21 Here, as noted, Congress did not incorporate into
22 PROMESA the Bankruptcy Code provision allowing for the
23 appointment of an examiner, and National has identified no
24 other right under the Bankruptcy Code that it seeks to
25 preserve through its motion.

1 The Court concludes that Section 105(a) is, at best,
2 a weak source for authority to take a particular action that
3 Congress has expressly denied the Court authority to take,
4 especially one involving an entity, the United States Trustee,
5 whose role in these Title III proceedings is limited.

6 To the extent that the Court does, in fact, have the
7 power under Section 105(a) of the Bankruptcy Code to order an
8 investigation into the allegations here, the Court declines to
9 exercise any such discretionary authority to do so. National
10 has not proffered evidence sufficient to support a reasonable
11 inference that any participant in the Title III mediation
12 process has traded on inside information to the detriment of
13 counterparties or the market, much less to the detriment of
14 the Title III and mediation processes.

15 The charges advanced in connection with the Motion
16 are sensational and largely speculative, particularly insofar
17 as they purport to show a problem undermining the integrity of
18 these proceedings, as opposed to possible misconduct in the
19 securities market. With respect to the latter concern, the
20 Court has no relative advantage over prosecutorial and
21 regulatory bodies when it comes to initiating an investigation
22 into National's allegations, and it is not appropriate to
23 burden the Commonwealth's already challenged resources to
24 bankroll a speculative venture because certain creditors want
25 to have more ammunition for potential challenges to an

1 eventual plan and its proponents.

2 If National develops information that would support a
3 colorable challenge to the voting or economic position of an
4 entity identified in National's motion, or any other party in
5 interest, National will have ample opportunity to commence
6 specific motion practice in connection with proceedings
7 concerning the Plan. For these reasons, National's motion is
8 denied.

9 For similar reasons, the Court declines the Official
10 Committee of Unsecured Creditors' offer of its investigatory
11 services, which are expensive and would be cast into shadow by
12 its own strategic priorities.

13 To be clear, the Court takes seriously all
14 allegations of improprieties, including those at issue here,
15 and is deeply concerned that all of the proceedings in the
16 Title III cases and the mediation be fair and appropriate, and
17 be seen as fair and appropriate. In this instance, however,
18 law enforcement and/or regulatory agencies are better suited
19 to investigate the existence of any misconduct and its impact
20 on transaction counterparties and bond markets than the Court
21 is.

22 The Court will, therefore, focus its deployment of
23 the limited judicial and debtor resources on moving these
24 cases forward toward the confirmation or rejection of proposed
25 plans of adjustment and litigation in that context. The

1 motion is denied, and the Court will enter an order reflecting
2 this decision.

3 We will now take a break until 11:20, and then I will
4 hear argument on the PSA motion. All participants must
5 disconnect from the Court Solutions lines and call back in
6 time to resume at 11:20.

7 Thank you very much. I look forward to resuming
8 shortly.

9 (At 11:06 AM, recess taken.)

10 (At 11:31 AM, proceedings reconvened.)

11 THE COURT: This is Judge Swain speaking.

12 MS. NG: Yes, Judge. It's Lisa.

13 THE COURT: Very good. Again, good morning,
14 everyone. We are now ready to turn to the PSA Creditors'
15 motion to impose deadlines for plan of adjustment, which is
16 Docket Entry No. 14478 in Case No. 17-3283.

17 I note before we begin the arguments that, despite
18 the press reports, I have not yet made a formal ruling on this
19 motion. I shared what I shared earlier about my inclinations,
20 which are fairly strong, in order to afford the parties notice
21 of what I am thinking and what I'd particularly like to hear
22 about in connection with the arguments.

23 We have 60 minutes in total allocated for the
24 arguments. And first up is counsel for the LCDC,
25 Mr. Kirpalani, for ten minutes.

1 MR. KIRPALANI: Thank you, Your Honor. Susheel
2 Kirpalani of Quinn, Emanuel, Urquhart & Sullivan on behalf of
3 the Lawful Constitutional Debt Coalition.

4 Judge, we are obviously one of the movants in the
5 joint motion of the PSA Creditors seeking to impose
6 plan-related deadlines on the Oversight Board in this historic
7 case. I think Your Honor knows we were one of the original
8 anchor tenants of the initial PSA, and we are an anchor tenant
9 of the last Plan of Adjustment filed by the Board. And we
10 have been working very hard since the inception of this
11 coalition to find a viable path forward for the Commonwealth
12 of Puerto Rico.

13 I'm not going to go through a lot of the arguments
14 that are already set forth in the papers in light of Your
15 Honor's ruling this morning. And I was hoping perhaps
16 instead, if I could focus my remarks on Your Honor's
17 inclinations that were announced at the outset. I just think
18 it's a better use of Your Honor's time.

19 Judge, we've been working with Mr. Bienenstock and
20 Mr. Rosen, as well as their investment bankers and their
21 municipal bankers at Citibank for years. The Court knows very
22 well that we have been -- and including some of the members of
23 the LCDC who were participants in the COFINA Title III case,
24 and the reason I reference it is two-fold. First, the
25 Oversight Board is very proud, as it should be, as should

1 AAFAF be, of the historic restructuring of 18 billion dollars
2 of sales tax bonds that shaved six billion of them off and
3 saved the Commonwealth and the people of Puerto Rico hundreds
4 and hundreds of millions of dollars of bond repayments.

5 And that structure, despite still being unrated, is
6 doing very well, and I think it's one of the true gems and
7 success stories of the case. And while they say that success
8 has many parents, the truth of the matter is, Judge, that the
9 COFINA deal happened. It happened in the timetable that
10 occurred because of this Court, not because of any of us. It
11 was the Court.

12 And I actually went back and looked at this in
13 preparing for today's argument. The Court had issued an
14 Order. It was in the nature of a stipulation, but it had the
15 force of a Court order. It was a so-ordered stipulation. And
16 that Order had not just the agents being delegated authority,
17 but it had deadlines. The deadlines were really tight right
18 at the outset of these historic cases.

19 And then the twin hurricanes occurred and the
20 deadlines were pushed out a little, but there were still
21 deadlines, because I think the Court knew, and all the
22 participants knew, that deadlines make progress. And that's
23 what we're asking for here.

24 We didn't -- we apologize if the motion appeared
25 Draconian, but perhaps that may be because Your Honor doesn't

1 realize just how close the parties remain on the overall
2 restructuring terms. I'm not going to go into anything in
3 mediation, of course, but the PSA has not been terminated.
4 Two proposals were disclosed publicly. The gap between those
5 proposals is really not insurmountable. And rather than have
6 a deadline imposed on a mere term sheet, Your Honor, these
7 term sheets, which Mr. Rosen and I have worked on together for
8 many years, have gotten so detailed that they are, for all
9 intents and purposes, an entire plan.

10 And the Oversight Board already has a plan. Even if
11 it changes -- let's say the Oversight Board says, I'm not
12 going to go with what's in the PSA, we're going to go and do
13 something else. Whatever they do, they have all of the
14 frameworks, definitions, et cetera, laid out in a plan and a
15 disclosure statement. It won't take them three and a half
16 months to put a term sheet together.

17 And what I would urge, Your Honor, is that -- to look
18 back at the COFINA stipulation that had actually a 45-day
19 deadline. After the agents reached an agreement on a
20 compromise, the Oversight Board was compelled to file a full
21 plan, not a term sheet for a plan, a full plan within 45 days.
22 So they complied with that, and we got COFINA restructured and
23 out of bankruptcy.

24 And so here, Your Honor, the two things I'd like the
25 Court to consider is if February 10th is what Your Honor

1 thinks is an appropriate period of time for the Oversight
2 Board to -- frankly, to fish or cut bait on the PSA that no
3 one yet has terminated, despite many missed milestones, but if
4 that's the period of time that the Court believes is prudent
5 and appropriate, you know, we are not going to disagree with
6 the Court's judgment on that.

7 What we would ask you to reconsider, however, is that
8 it shouldn't be a deadline for a term sheet. A term sheet is
9 really not to an operative document. It doesn't advance the
10 case at all. And they -- the Oversight Board has all the
11 tools it needs to file a new plan.

12 And I would imagine that Mr. Rosen and
13 Mr. Bienenstock could easily provide a plan to the Court.
14 They even noted in their pleadings that they're working on
15 something right now and they will be in a position to file it.
16 So having -- and I think they were referring to something
17 earlier than February. But having a deadline in place is
18 important because of the discipline that we believe the case
19 so sorely needs, but it really should be a deadline that is
20 for an actual legal, binding document, like a plan, not a term
21 sheet.

22 And so if the Court thinks February 10th is
23 appropriate, that should be the deadline for the Oversight
24 Board to file a plan and disclosure statement, together with
25 proposed moving forward dates. Because the other point to

1 make here, Your Honor, is that filing a plan, even a plan
2 itself, doesn't really advance the case. We've had one on
3 file for eight months. Not being critical about all the
4 things that have happened, we have to take notice of them.
5 It's affecting life all over the world. But having the
6 additional deadlines, when do people get to see a disclosure
7 statement that's been approved by the Court? When do people
8 get to vote on that, up or down? And when does Your Honor get
9 to decide up or down, whether it meets the requirements of
10 PROMESA? Those subsequent deadlines are, frankly, even more
11 important than the first deadline.

12 So if the Court could consider our timetable and
13 adjust it, we would greatly appreciate that, Your Honor. And
14 other than that, I'm here to answer questions. Like I said,
15 I've kind of thrown away my entire script, because I think the
16 Court correctly concluded, you have jurisdiction. We're not
17 attacking the fiscal plan. There's no need for me to go into
18 that.

19 THE COURT: Well, I thank you for your adaptability
20 and for those remarks. I don't have questions for you. At
21 this point, I'd like to hear from other speakers, and so I
22 will turn to Mr. Stancil for the Ad Hoc GO bondholders.

23 MR. STANCIL: Good morning, Your Honor. Mark Stancil
24 for Willkie Farr for the Ad Hoc GO Group.

25 I don't have a lot to add to Mr. Kirpalani. We

1 would, likewise, support that proposed modification to Your
2 Honor's indication, I would say, you expressed earlier today.
3 I think I would just add one more reason that I think is
4 mentioned in our motion, but I think it would be very helpful
5 in expediting the process generally and clarifying the path
6 forward to make that a plan and disclosure statement deadline
7 instead. And that is, as Your Honor is aware, there is -- and
8 we find this in the footnotes of our filings -- there is a
9 question as to whether we would need to seek some sort of
10 enforcement remedy under the PSA, and a term sheet might leave
11 us with a little bit of disconnect perhaps between whether
12 whatever the Board is proposing in the way of a term sheet is,
13 in fact, consistent with the PSA, or not something permitted
14 by the PSA existing.

15 And so I think it will just help everybody's
16 discussions and evaluation if we're doing an apples-to-apples
17 comparison of what I would say is the current PSA and
18 whatever -- the current plan, pardon me, and whatever may come
19 out of this process. So we support Mr. Kirpalani's proposed
20 modification, and I think, you know, this will help everybody
21 communicate more effectively and hopefully more consensually.

22 THE COURT: Thank you, Mr. Stancil.

23 I will now turn to Mr. Palmore for the Constitutional
24 Debtholders Group.

25 MR. PALMORE: Thank you, Judge Swain. Joseph Palmore

1 of Morrison & Foerster for the Ad Hoc Group of Constitutional
2 Debtholders.

3 Our group is not a frequent visitor to the podium in
4 this case. Our decision to join this motion and appear here
5 today shows how critical we believe this matter is, and that
6 it's critical that these Title III proceedings be put on a
7 path to completion.

8 We appreciate the Court's indication that it is
9 inclined to impose a deadline, but I would associate myself
10 with the remarks of Mr. Kirpalani and Mr. Stancil, that we
11 believe that the deadline should be for the filing of a plan
12 and a disclosure statement.

13 Term sheets, we assume that by a term sheet, the
14 Court would mean something that was sufficiently detailed that
15 parties, all parties could understand what was being proposed.
16 And I would submit that the delta between a meaningful term
17 sheet and an actual plan and disclosure statement is not
18 significant enough to forebear from making this deadline for
19 the filing of a plan and a disclosure statement.

20 That's a legally operative document. And then with
21 meaningful deadlines behind it, we think that would be the
22 best course to take us on the path toward completing these
23 proceedings.

24 If the Court has no other questions, I'll yield the
25 balance of my time.

1 THE COURT: Thank you, Mr. Palmore.

2 I'll turn now to Mr. Mayr.

3 MR. WILLETT: Good morning, Your Honor. It's Sabin
4 Willett, actually, from Morgan Lewis. I'm handling this one
5 for the QTCB Group.

6 THE COURT: Hello, Mr. Willett.

7 MR. WILLETT: Good morning. I don't have much to add
8 either.

9 Mr. Kirpalani explained that deadlines are a really
10 handy tool in a lawyer's toolbox, and they help us explain to
11 our clients why we need to focus on this problem today and not
12 later. The question, I guess, that's left is what sort of
13 deadline, for a term sheet or a plan.

14 And I think you've heard everything I might say about
15 why a plan deadline will be more practical here. The only
16 point I'd emphasize is that I think everything you've heard
17 from us will apply just as equally to Mr. Bienenstock. And I
18 have no doubt that he will pursue vigorously and in good
19 faith, but he has a client, too. So if you arm both his side
20 and the creditors' side with that tool, we will be able to all
21 move the case much more promptly.

22 Thank you, Your Honor.

23 THE COURT: Thank you, Mr. Willett.

24 And so next up is the Oversight Board, by
25 Mr. Bienenstock, on my list at least. Remember you have to

1 unmute both your computer and your phone.

2 Mr. Bienenstock? I can't hear you yet. I'm hearing
3 somebody.

4 MR. BIENENSTOCK: I'm sorry. Can you hear me now,
5 Your Honor?

6 THE COURT: I can hear you now. Thank you.

7 MR. BIENENSTOCK: Okay. Thank you. Martin
8 Bienenstock of Proskauer Rose, LLP, for the Oversight Board,
9 as the Commonwealth's Title III representative.

10 Your Honor, first, thank you for letting us know
11 about your preliminary thoughts on this motion at the outset
12 of the hearing today, because it enabled us to contact our
13 client. So let me first address that, and then some of the
14 issues raised by the creditors orally, and one or two in their
15 papers.

16 As far as the February 10 deadline, the Oversight
17 Board can definitely file a proposed term sheet by February
18 10, 2021, and perhaps significantly earlier than that. The
19 term sheet would be based on the current certified Fiscal
20 Plan.

21 If it turns out that, due to the change in membership
22 of the Oversight Board, or other factors, that a new fiscal
23 plan is required, then the new fiscal plan would be unlikely
24 to be certified before April or May, which would make it
25 highly impracticable, if not impossible, to file a term sheet

1 before the new certified -- the new fiscal plan is certified.
2 And if that happened, we would obviously -- if that situation
3 is arising, we would obviously come to the Court and explain
4 the situation.

5 In respect of the -- I think the sole issue that's
6 really been raised by the creditors this morning is they would
7 prefer to have a full plan and disclosure statement rather
8 than a term sheet. I would first say that is doable for the
9 reasons that Mr. Kirpalani gave. But having said that, that's
10 probably not -- should not or we would prefer that not to be
11 part of the order for the following reason: If it turns out
12 that we bury the terms of the existing proposed plan and do
13 not have constituencies signed on to the revision, then when
14 we file the term sheet or plan disclosure statement, we would
15 be asking the Court for time to further negotiate to see if
16 support can be -- can be obtained. And then it would
17 obviously require some tweaks to whatever we file, and then it
18 would make most sense efficiently to then do the new plan and
19 proposed disclosure statement.

20 If we already have support when we file a revised
21 proposed plan, then it would make perfect sense to file the
22 actual documents, as opposed to the term sheet, but we don't
23 know now which situation we're going to have. So we'd like to
24 have the flexibility to do what makes most sense at the time.

25 In terms of some of the comments in the creditors'

1 papers, the one point I'd like to make, because I think in --
2 as Your Honor can tell, the GO Creditors making this motion
3 and the Board have a lot of commonality in that each side, for
4 some of the same and maybe some different reasons, wants to
5 get on with this and wants to get the debt restructuring done
6 to enable Puerto Rico to regain market access. From the
7 Board's point of view, and obviously from the creditors' point
8 of view, it's better -- time is money, and we get that.

9 And where we differed from the Draconian consequences
10 -- and let me just make clear that nowhere in our papers did
11 we ever suggest the Court did not have the power to give us a
12 deadline, failing which the Court would dismiss the case.
13 It's that we concluded the same as the Court, that that would
14 be a fairly Draconian remedy that would not benefit the people
15 of Puerto Rico, to say the least. And so we were objecting to
16 the remedy, not the Court's power.

17 Our views on the Court's power over the Fiscal Plan
18 are well-known, and I don't have to get into that. But the
19 other theme in many of the creditors' pleadings is that
20 there's been no progress. And I think any of the creditors
21 would -- and these are highly sophisticated investors,
22 probably the best in the world. If they were presented with
23 an investment where they could get five to ten times their
24 money in a few years, they would all be delighted, because
25 that's not the average rate of return.

1 So while they -- they refer to 650 or 800 million
2 dollars as the cost of these cases, and I know it always makes
3 a good newspaper headline, you know, what the professionals
4 are being paid, you know, the Board, AAFAF, the committees, et
5 cetera, when one sits down and says, well, let's see what's
6 been accomplished, the Commonwealth had obligations of what
7 the ERS Bondholders said to the First Circuit were in excess
8 of two billion -- I think they even said five billion, but
9 it's two to three billion -- to take money to pay to those
10 bondholders if they were going to pay pensions. And the
11 Commonwealth, subject to a certiorari request that's pending,
12 the Commonwealth has been relieved, because of the Board's
13 efforts, of that two to three billion dollars.

14 From the GO Creditors point of view, it's in process,
15 but based on the Court's ruling that the monolines hadn't made
16 a colorable case that they had claims against the clawback
17 revenues at the Commonwealth level, with HTA due to receive
18 roughly five billion of that, and PRIFA about another two
19 billion, and CCDA half a billion plus, that's another seven
20 and a half billion dollar savings that is money that is
21 available to the Commonwealth and debt service that would
22 otherwise not be available.

23 The Commonwealth's litigation so that municipalities
24 would pay for their own retirees, saving over 200 million a
25 year, you know, over a period of five years, that's a billion

1 or more. So add it all up. And for the price of 650 or 800
2 million dollars, the Commonwealth, and particularly the GO
3 Creditors, have saved over eight billion.

4 And I say this because I think that most graphically
5 illuminates the fact that this is not a case where there has
6 been no progress. It was kind of Mr. Kirpalani to point to
7 COFINA, and then there was GDB, and then there was all the
8 savings in the Fiscal Plan that the Board has accomplished,
9 and the structural reforms it has both partially accomplished
10 and partially needs to enforce going forward, but great
11 progress has been made that you can identify in hard numbers.

12 And I don't think any -- as I said, any of the hedge
13 fund creditors typically invest where you get ten to one on
14 your money, or even five to one, or three to one for that
15 matter. So this is not a situation where this is a draining
16 expense that's not producing value. It's producing so much
17 value, it offsets the expense by multiples.

18 But that said, I'd like to go back to the fact that
19 we are not far in spirit at all from where the creditors are
20 coming from. We want to get on with the restructuring. As I
21 said, we may well file a term sheet or entire plan before
22 February 10. It's certainly -- if we can, that's what the
23 Board wants to do. But if we end up filing something without
24 creditor support, then we're probably going -- almost
25 certainly going to be asking the Court to defer the -- what

1 will definitely be, you know, a litigation explosion on
2 confirmation in terms of discovery, et cetera, notwithstanding
3 everything that's gone before, while we see if we can convert
4 whatever we file into something that has creditor support, if
5 we don't start out with that.

6 And unless the Court has questions, those are the
7 only remarks I think are relevant anymore, given the Court's
8 suggestion.

9 THE COURT: Thank you. Before you sign off, I want
10 to make sure that I understand your scenario. So it sounds as
11 though you would be comfortable with my saying, there must be
12 a term sheet at a minimum, and preferably an amended plan and
13 disclosure statement, no later than February 10th, 2021. If
14 you file it as a term sheet, it will likely be because you
15 haven't garnered your critical mass of support yet.

16 As I said before, when I gave the heads-up this
17 morning, I said that in addition to the term sheet, I would
18 require you to file a specific proposed schedule for getting
19 to disclosure statement consideration and any associated
20 discovery or litigation solicitation confirmation proceedings.
21 So in the scenario where you say you have the Board's proposal
22 without the critical mass of support and, therefore, you
23 haven't filed a full amended plan and disclosure statement,
24 would you then anticipate that your proposed schedule would
25 include some sort of specific period during which you seek to

1 | garner that support, and at the end of which you must file the
2 | proposed plan and disclosure statement no matter what, and
3 | then the remainder of the litigation schedule?

4 | (Sound played.)

5 | MR. BIENENSTOCK: With one -- Your Honor, with one
6 | caveat, I think the answer is yes, although the words, the
7 | phrase "no matter what" are a little bit scary, but --

8 | THE COURT: We have to move --

9 | MR. BIENENSTOCK: But the caveat is this, as I
10 | mentioned: If the Board determines it has to change the
11 | Fiscal Plan and so that any term sheet based on the existing
12 | one would potentially be moot or ineffective, then I would
13 | propose that we simply come and tell the Court that and what
14 | the situation is.

15 | What I've said already is it would likely be that a
16 | new fiscal plan could be done by April or May. But whatever
17 | it is, we'd like some sort of provision where we can tell the
18 | Court, so that if it just doesn't make sense to do it by
19 | February 10, if we already know that we have to change things,
20 | we could explain the situation to the Court and make a
21 | recommendation as to what makes most sense in those
22 | circumstances.

23 | THE COURT: So you wouldn't anticipate saying this is
24 | a term sheet reflecting the plan as we would propose to put it
25 | forward; it would require changes in the Fiscal Plan; that

1 process will take X period of time; therefore, here's our
2 timetable that includes revision of the Fiscal Plan, and then
3 the Plan and Disclosure Statement, so on and so forth? Why
4 can't you tell me that?

5 (Sound played.)

6 MR. BIENENSTOCK: Well, I just want to make sure,
7 Your Honor, I understand. If we're going to change the Fiscal
8 Plan, we may not know -- like, for instance, if in December or
9 January we knew that the membership of the Board has changed
10 and the new membership wants a new fiscal plan, we won't know
11 necessarily what the new debt sustainability is going to be
12 until that plan is done. So it would be difficult to file a
13 term sheet.

14 Now, I suppose it's possible that we would know where
15 we're heading, but that will depend on the thoughts of the new
16 Board members that we can't today predict. So what I'm saying
17 is we're fine filing a term sheet or a plan by February 10
18 based on the existing fiscal plan, and providing, as the Court
19 mentioned, a proposed schedule for further negotiations, if
20 necessary, discovery, disclosure statement hearing, et cetera,
21 voting, et cetera. But if we have to change the fiscal plan
22 and we don't know what those changes are going to be in
23 advance, then I'm saying we'd like the opportunity just to
24 tell the Court that's the situation we're in, and we'll need
25 until April or May until we know what the -- what the terms of

1 that plan could be.

2 THE COURT: Thank you. That's clearer for me.

3 I think what I would be inclined to do is two things:
4 First of all, even with the February 10th proposal, I would
5 still expect the periodic status reports, including the
6 December 4th status report that you had proposed to file, so
7 that we're not in a complete black box between now and
8 February. My inclination would be to have a schedule that
9 requires the filing by February 10th. And maybe that's a
10 schedule that requires, at a minimum, a term sheet, though
11 preferably a plan and disclosure statement with a proposed
12 schedule.

13 And so that means that if you don't believe that you
14 can make that deadline because of the need for a change in the
15 Fiscal Plan, you would have to, in a status report or by
16 motion, which probably would make more sense, ask for an
17 alteration of that schedule for the specific reason that the
18 new Board wants to revisit or needs to revisit the Fiscal
19 Plan, and tell me the specific changes that you would want to
20 make in my timetable.

21 I would rather not have a timetable order that has
22 if-then statements that might be triggered on less than the
23 full clarity that we might be able to get as to the reasoning
24 for it under a structure that would require a specific request
25 for an alteration in the schedule. I hope that makes some

1 sense.

2 MR. BIENENSTOCK: Yes. Your Honor -- Your Honor?

3 THE COURT: Yes. Yes.

4 MR. BIENENSTOCK: Oh, I don't know if Your Honor
5 heard it, but there was a voice that I heard that came out of
6 the blue. But anyway, I did hear what Your Honor said, and
7 that all seems workable from the Board's point of view.

8 THE COURT: Thank you, Mr. Bienenstock. And I hope
9 the disembodied voice doesn't interfere too much.

10 Okay. Now I will turn to Mr. Friedman for AAFAF.

11 MR. FRIEDMAN: Good morning, Your Honor. It's Peter
12 Friedman from O'Melveny & Myers on behalf of AAFAF.

13 I think, largely, I have the same view as
14 Mr. Bienenstock. Overall, I do want to note that, as we did
15 in our papers, cataloged, the last four years cannot be
16 properly characterized in stasis. There's been a lot of
17 success, been a lot of obviously spectacular challenges, both
18 natural -- there have been some, you know, obviously,
19 frustrations, but there has been a lot of progress overall.

20 Mr. Kirpalani talked about COFINA, and I think that
21 one of the important lessons about COFINA in terms of going
22 forward on any time line, but especially one that is
23 expedited, is that the government and all parts of the Puerto
24 Rico Government, from the executive branch to the legislative
25 branch, were on board and able to do the things that have made

1 COFINA a highly successful credit, one that, as Mr. Kirpalani
2 points out, isn't rated but is a par -- really is a par
3 security.

4 And there was legislation. There was the stand-up of
5 a new entity with -- you know, and there was a lot of
6 cooperation, in part because the government's needs were met
7 in that case. Congress provided confirmation protections, the
8 good faith requirements of the Plan, wrote designation,
9 equitable subordination rights. And so what -- however things
10 move forward, it's going to be critical for AAFAF and the next
11 Puerto Rico Government to be involved.

12 And obviously, as we mentioned in our status report,
13 AAFAF is extremely committed, at the direction of the Governor
14 and AAFAF's leadership, to being cooperative with whomever
15 emerges as the winner next week. There will be a new
16 governor. We don't know who it is, but AAFAF is already
17 preparing for a transition, as are other branches of the
18 government.

19 Given that -- the deadline the Court has imposed,
20 we'll obviously have a substantial amount of work to do even
21 before the next governor is inaugurated on January 1st, to
22 make sure that that governor and his administration is
23 prepared to be able to work with the Board and stakeholders in
24 order to be in a position either to, you know, be on board
25 with the Plan, or if it's not, to be prepared to, you know,

1 make clear what its needs would be in order to have -- to be
2 able to support a plan.

3 You know, that plan, I think as we highlighted in our
4 papers, whatever it is may not be something that creditors all
5 want. I think we cataloged some of the overly optimistic
6 assessments that creditors may be making about cash on hand,
7 or the SSI decision, or the effect and immediacy of FEMA aid
8 and what effect those might have. So the government may
9 continue to have concerns about the projections or projected
10 uses of funds. We'll obviously continue to communicate those
11 to the Board and creditors, but overall -- and I guess the
12 last point I'd make, Your Honor, is that we do think that some
13 flexibility is necessary, along the lines that Mr. Bienenstock
14 pointed out, not only are there going to be some new Board
15 members, there will be, as you know, a new governor.

16 That governor will have to engage in a fiscal plan
17 process for the first time. As the Court knows, that's, I
18 think, a highly involved process. And so if there is some
19 kind of new fiscal plan, we can assume that fiscal plan may
20 take some work from the government's role. It's a role the
21 government has always taken seriously and put a tremendous
22 amount of effort into, and a tremendous amount of dialogue
23 with the Oversight Board. And if the Oversight Board is going
24 down the path of a new fiscal plan, the government's -- you
25 know, I know how this government --

1 (Sound played.)

2 MR. FRIEDMAN: -- takes its fiscal plan
3 responsibility, and we assume the next government will take it
4 equally seriously.

5 So that's really the sum total of my remarks, Your
6 Honor, and I appreciate the time to address the Court this
7 morning.

8 THE COURT: Thank you, Mr. Friedman.

9 Next I have Ms. Miller from Ambac for five minutes.

10 MS. MILLER: Good morning, Your Honor. Atara Miller
11 from Milbank on behalf of Ambac.

12 THE COURT: Good morning.

13 MS. MILLER: Your Honor, before I -- good morning.
14 Before I address your proposal for resolving potentially this
15 motion, I just want to make one quick point, because a lot has
16 been made by a number of parties, including Mr. Kirpalani and
17 Mr. Bienenstock, about the fact that no party has yet
18 terminated the PSA. And as Your Honor knows, there is a
19 hundred million dollar breakup fee in the PSA. But that fee
20 is payable to the creditors if they terminate only if the
21 Oversight Board actually modifies the treatment of the GO
22 bonds in an amended plan. And hence, the sparring about
23 whether the deadline this Court sets be to file a term sheet
24 or to actually file an amended plan.

25 And Mr. Bienenstock's sort of spar back was, we'll go

1 forward and file something, but you won't be happy with it,
2 because it's going to be based on the current Fiscal Plan.
3 And we've already seen the Oversight Board's proposal and term
4 sheet under the current Fiscal Plan. So this motion, as much
5 as anything, is really about forcing the Oversight Board to
6 either move forward with this sweetheart deal for the PSA
7 Creditors, or to come clean and formally modify the GO bond
8 treatment, allowing the PSA Creditors to terminate, line their
9 pockets with a hundred million dollars of the Commonwealth's
10 money, and then go back to the table and negotiate a new deal.

11 Your Honor, as we've said often, we think that the
12 best path forward for Puerto Rico is through a consensual
13 deal. And we urge the Oversight Board, as Your Honor
14 suggested in your opening remarks of this hearing, to
15 constructively engage during this time with all creditors in
16 an effort to arrive at such an arrangement. And we urge the
17 Oversight Board and its new members to use the opportunity
18 that this time would allow to critically review its Fiscal
19 Plan, as Mr. Bienenstock suggested. Some of the new members
20 of the Oversight Board might want the reasonableness of the
21 assumptions and projections, including based on actual
22 performance, the Commonwealth's cash position, to audit the
23 pension claims and then reengage with all creditors to build
24 consensus.

25 And Mr. Kirpalani, in his remarks, credited this

1 Court and the deadlines that Your Honor set for the success
2 and speed of the COFINA deal, which we certainly believe and
3 agree had an important role to play. But another key
4 component, which is one that Mr. Friedman alluded to, was the
5 ability to build consensus. Having everybody, all interested
6 stakeholders around the table, including the Oversight Board
7 and the favored creditors, deciding that it was better to
8 compromise to reach a largely consensual deal that could then
9 move expeditiously to confirmation.

10 And the deadlines that Mr. Kirpalani referred to both
11 this morning and included in their motions are only viable in
12 a world like COFINA, where there's a plan supported by all
13 major creditors. If we don't have that, we're going to end up
14 in the world that Mr. Bienenstock referenced, which is -- I
15 think he described it as an explosion of litigation leading up
16 to confirmation.

17 That is going to be a very long, painful, and
18 expensive process for Puerto Rico, and one that will leave it
19 reputationally battered and hard pressed to regain access to
20 the capital markets, including, in particular, through revenue
21 bonds, which often provide the most cost effective means of
22 raising capital for municipalities.

23 So we agree with --

24 (Sound played.)

25 MS. MILLER: -- Your Honor. I think you said there

1 has to be a time that -- the time is now. And that we all
2 start moving forward, and we hope that we can do it
3 constructively and consensually, to put Puerto Rico back on
4 its feet for now and well into the future.

5 Unless Your Honor has any questions, thank you.

6 THE COURT: I don't at this point. Thank you,
7 Ms. Miller.

8 Next on my list is Mr. Despins for the UCC for five
9 minutes.

10 MR. DESPINS: Good afternoon, Your Honor. Luc
11 Despins with Paul Hastings on behalf of the Committee. I'll
12 be, I think, shorter than five minutes.

13 Obviously the Committee supports the denial of the
14 motion. As to the other aspects that are being discussed, you
15 know, the Committee is obviously in favor of, you know, the
16 engagement by creditors in negotiations, but as we pointed out
17 in our Response, you know, we have practically not been
18 involved since January. And then we were involved just to be
19 told of the result of the negotiations.

20 And now we see in the term sheets that are now public
21 that the Board and the creditors have agreed that -- as a
22 grand total of 50, 5-0, million dollars, that will be
23 available to Unsecured Creditors, which is, you know -- so
24 it's difficult to see how this is going to play out, meaning
25 that's the only thing that they've actually agreed on, that we

1 would get 50 million dollars.

2 Of course, we were never involved in those
3 discussions. And so are we going to be involved in the
4 renegotiation of that point, or that's already a fait
5 accompli? Don't know.

6 In that regard, I would note that both the Board and
7 Bondholders judiciously avoided any -- addressing the
8 questions that we raised as to who knew what and when, when
9 the Court was considering our two motions. And, in fact, the
10 Bondholders in their pleading, Docket No. 14666, actually
11 confirmed that there were no negotiations going on at the time
12 of the September -- sub 16th, or something like that, hearing.

13 So, you know, the bottom line is we're happy to
14 engage in constructive negotiations, but we are a little bit
15 concerned that this may not happen unless the Court directs
16 specifically that this happens with respect to the Committee.

17 Thank you, Your Honor.

18 THE COURT: Thank you.

19 Now for the ERS bondholders. Mr. Rosenblum, for two
20 minutes.

21 MR. ROSENBLUM: Good afternoon, Your Honor. Benjamin
22 Rosenblum from Jones Day on behalf of the ERS Bondholder
23 Group.

24 We are in favor of moving these cases forward.
25 However, we don't support the current plan, and we don't

1 support that moving forward. As with others, we are very much
2 in support of a more consensual and implicit process here. I
3 want to emphasize that nobody had talked to the ERS
4 Bondholders about a plan on the merits for well over a year,
5 and we would appreciate having those conversations.

6 Briefly, with respect to some of Mr. Bienenstock's
7 remarks, we take issue with the boasting or positive spin
8 about the litigation that the debtors have initiated against
9 various of the creditors, including the ERS Bondholders. I
10 also disagree with the characterization or suggestion that
11 litigation has somehow led to the resolution of the ERS
12 Bondholders' claims, or whether that focus on litigation has
13 actually led to the advancement of these cases.

14 As evidenced by the numerous adversary cases
15 commenced by the debtors against the ERS Bondholders and
16 others, there clearly is no resolution of our claims against
17 either the Commonwealth or ERS. I'm encouraged by Your
18 Honor's opening remarks encouraging parties to engage in good
19 faith negotiations. And I just want to express that the ERS
20 Bondholders hope that we get an opportunity to be part of
21 those discussions.

22 Thank you, Your Honor.

23 THE COURT: Thank you, Mr. Rosenblum.

24 And before we go back to Mr. Kirpalani, I'd ask
25 Mr. Bienenstock whether he wishes to respond to any of the

1 concerns that have been expressed regarding broader
2 collaboration in negotiations toward the Amended Plan, which
3 is, as others have noted, something that I expect.

4 So, Mr. Bienenstock, did you wish to say anything
5 further?

6 MR. BIENENSTOCK: Sure. Your Honor, Martin
7 Bienenstock of Proskauer Rose, LLP, for the Oversight Board as
8 Title III representative for the Commonwealth. And thank you,
9 Your Honor, for giving me the opportunity. So I'll keep --
10 I'll keep the privilege very short.

11 As a general matter, the Oversight Board, of course,
12 wants to maximize agreement to the plan from all
13 constituencies. Hypothetically, if a constituency basically
14 lets it be known that it's really not willing to discuss
15 anything that's any distance, any measurable distance from
16 payment in full, we know that that's a waste of time. So
17 constituencies that fall into that category, you know, we just
18 know, and we assume the mediators know, but whether they do or
19 not -- that's not anyone's useful allocation of time. But to
20 the extent that reasonable discussions can be had, of course
21 we want to have them with all possible constituencies. And
22 we've had them with Retirees, with Unions, with PBA Creditors,
23 and with different tranches of the GO Creditors.

24 Now, I know, for instance, that the General Creditors
25 Committee, it's one of the parties this morning that, you

1 know, basically is requesting a seat at the table, not as if,
2 you know, we don't -- we haven't spoken to them, and lines of
3 communication are always open. But, as Your Honor knows,
4 they're also the ones who are currently asking the First
5 Circuit to expedite their appeal of their -- the timing of
6 their ability to attack the GO priority.

7 Now, we are all, I guess, experienced enough,
8 sophisticated enough, and have a large enough sense of humor
9 to know that we can talk to one another even if simultaneously
10 one of the parties is taking a position in the Court that
11 would torch all the other arrangements that we've made.
12 But -- so while yes, we do -- we will -- I can commit to this:
13 We will at least touch base with all the major constituencies
14 who have spoken up, and if there's any even modest likelihood
15 of reaching an arrangement, we will pursue it.

16 To the extent it becomes clear, and sometimes it
17 becomes clear very fast, that there's -- there can be no
18 meeting of the minds because there's just too big a distance,
19 you know, I can't say that we're going to ask the mediators or
20 some such thing to create a whole big mediation with such
21 parties if we know in advance we're just too far apart. But
22 we are also -- we all have enough gray hair and experience to
23 know that sometimes the biggest distances and hardest
24 positions, at one point in a case, somehow transform. And so
25 we're not going to write anyone off. And we are optimistic

1 and open, but we're also going to be practical.

2 I hope that responds to what Your Honor was asking.

3 THE COURT: Thank you. I will just say that I will
4 expect, and will probably say something to this effect in
5 writing, that negotiations during this period are expected to
6 be ones in which the Oversight Board and all relevant
7 stakeholders will act in good faith and responsibly toward the
8 goal of, as I articulated, the goal of a substantially
9 consensual plan. You can hear that as consensual as possible,
10 as broad support as possible, but that is so terribly
11 important for efficient progress and for progress that
12 redounds to a good result for creditors and for Puerto Rico.

13 So I thank you for your undertaking, Mr. Bienenstock,
14 and for the willingness that other stakeholders here have
15 expressed to work in good faith toward a plan design with
16 broader support.

17 So with that, I return to Mr. Kirpalani.

18 MR. KIRPALANI: Thank you, Your Honor.

19 So a few reactions, and perhaps a little bit of
20 context. First, Mr. Bienenstock mentioned that the Oversight
21 Board is changing over or potentially changing over some
22 members, and there may need to be a new opinion on a fiscal
23 plan in, you know, the late first quarter or early second
24 quarter of 2021.

25 The point I wanted to make here, Judge, is that

1 | there's a fiscal plan that's done every year. A fiscal plan
2 | is done for a 30-year period of time. And it's hard to sit
3 | and hear statements about a fiscal plan having a dramatic
4 | impact on whether a plan of adjustment should go forward or
5 | not go forward, because, like I said, it changes every year.
6 | Whereas new bonds that are going to be issued go out for
7 | decades.

8 | And so just because there's a new fiscal plan, it
9 | doesn't mean that there would necessarily be a new plan of
10 | adjustment. If that were the case, we would never have
11 | finality in the Title III case at all.

12 | To give some context, and this is in our papers, it's
13 | really important to kind of grasp this, and I don't think
14 | anybody has really tried to walk the Court through it. The
15 | COFINA deal also impacts the fiscal plan, right? But the
16 | COFINA deal used up about, I'm using very round numbers, 500
17 | million dollars a year. So of own-source revenues, if you
18 | include COFINA assets as part of the own-source revenue, under
19 | the 2020 Fiscal Plan that was filed by the Board, there's
20 | about 15 billion dollars a year of own-source revenue.
21 | Fifteen billion.

22 | And under our new PSA, 1.5 billion, again, round
23 | numbers, of the 15 billion for 2020, but it's 1.5 billion per
24 | year would generally be consumed by COFINA, plus new GO Bonds.
25 | That's it. 1.5 billion.

1 And where we are with the Board right now, from the
2 public disclosures, is they brought that number down quite
3 dramatically. We tried to meet them somewhere in the middle,
4 and we'll see what the Board decides to do in the future.

5 The point of this, though, Your Honor, is that we are
6 talking about roughly nine percent or so of the own-source
7 revenues per year for 30 years that would be dedicated to debt
8 service. So when Mr. Bienenstock says, well, there may need
9 to be a new fiscal plan that changes the debt sustainability,
10 it just doesn't necessarily add up that way, because 90
11 percent plus of the fiscal plan is used for other things that
12 have nothing to do with debt service.

13 And so while we are here --

14 (Sound played.)

15 MR. KIRPALANI: -- trying to ask the Title III Court
16 to help us restructure Puerto Rico and get out of bankruptcy,
17 the Board takes the position, we can't debate the Fiscal Plan.
18 Fine. We've lived with that. But then they can't say, well,
19 the Fiscal Plan is the reason why we can't actually do the
20 debt restructuring, because it doesn't add up, not legally,
21 and not as a matter of actual math. So I wanted the Court to
22 understand that.

23 The second thing, Judge, is that I didn't hear
24 Mr. Bienenstock actually disagree that he could file a plan by
25 February 10th. I think we all know how good the lawyers are

1 at Proskauer. We've seen the volume of paper and the
2 sophistication of the transactions that they can implement.
3 And as I said earlier, and I think the other PSA Creditors
4 support this as well, whatever plan the Board wants to move
5 forward on should be the plan that they file by that date.

6 They can file the term sheet earlier if the Board
7 believes it's prudent, from a case management perspective, to
8 put a term sheet out, have parties reengage. We welcome all
9 of it, all of it. But to have a deadline of February 10th,
10 when it's only October 28th now, to just put a term sheet out,
11 and then perhaps have a plan process begin at that point, we
12 will be just watching the island continue to stockpile cash
13 while GO Bondholders, which have the highest constitutional
14 priority, are left unpaid, and every other current expense of
15 Puerto Rico is paid.

16 Now, we get it. There are certain things that we can
17 try to push and certain things we can't try to push. We
18 didn't want to. We wanted to compromise what our rights are
19 and accept haircuts that would enable pensioners to be treated
20 fairly and essential services to be paid. But the delay upon
21 delay, without any actual end in sight, is why we felt
22 compelled to file the motion.

23 So I think, Your Honor, the Board should file a term
24 sheet soon, sooner than February 10th, if that's their
25 proposed course of action. February 10th should be the

1 deadline for a plan and disclosure statement that gets the
2 ball rolling. And hopefully, Your Honor, what the Court said,
3 on May 17th, I think it was, 2017, that, you know, we will see
4 an end to these cases. Failure is not an option. And the
5 hope that you inspired in all of us will come to fruition in
6 calendar year 2021.

7 Thank you, Judge.

8 (Sound played.)

9 THE COURT: Thank you, Mr. Kirpalani.

10 I ask that you all just wait patiently with me for a
11 minute.

12 Thank you for your patience. I am now going to make
13 my ruling.

14 Before the Court is the Joint Motion of PSA Creditors
15 Pursuant to Section 312 of PROMESA and Section 105 of the
16 Bankruptcy Code to Impose Deadlines for Plan of Adjustment,
17 which is Docket Entry No. 14478 in Case No. 17-3283. This
18 motion was filed by the Ad Hoc Group of Constitutional
19 Debtholders, the Ad Hoc Group of General Obligation
20 Bondholders, the Lawful Constitutional Debt Coalition, and the
21 QTCB Noteholder Group, which I'll refer to collectively as the
22 PSA Creditors, or Movants.

23 The motion is the subject of several objections by
24 the Oversight Board, AAFAF, National, Ambac, and the UCC, as
25 well as a statement by the ERS Bondholders, and the Movants

1 have filed a Reply. The Court has considered carefully the
2 parties' submissions and the arguments made on the record
3 today. Again, the Court appreciates the parties reorienting
4 their remarks to address specifically the Court's preannounced
5 inclination as to the ruling.

6 The Court has jurisdiction of this motion under
7 Section 306(a) of PROMESA. The Court now makes its oral
8 ruling as to the motion, and reserves the right to make
9 non-substantive corrections in the transcript of the ruling.

10 The motion is denied in part and granted in part for
11 the following reasons: The parties don't dispute the Court's
12 authority to impose deadlines, but only the propriety of
13 imposing those requested by the PSA Creditors, together with a
14 predetermined sanction of dismissing the Title III case if
15 such aggressive deadlines are not met. At issue then is a
16 prudential dispute rather than a legal one.

17 Section 312(b) of PROMESA clearly provides that "if
18 the Oversight Board does not file a plan of adjustment with
19 the petition, the Oversight Board shall file a plan of
20 adjustment at the time set by the court." Moreover, Section
21 105(a) of the Bankruptcy Code, as incorporated by Section
22 301(a) of PROMESA, supplements the Court's inherent authority
23 to manage its docket and courtroom in an efficient manner by
24 recognizing the Court's authority to issue any order that is
25 necessary or appropriate to carry out the provisions of

1 PROMESA.

2 While the Court is not persuaded that the specific
3 relief requested by the moving creditors is appropriate, the
4 Court does find that a near term deadline for a definitive
5 action with respect to the contours of an amended plan
6 proposal is necessary and should help to focus the existing
7 members of the Board, new political leaders, and new members
8 of the Board on the need to work with each other and with
9 creditors to find a path to a realistic exit from Title III.

10 While it is certainly true that progress has been
11 made in the more than three years that these cases have been
12 pending, despite an extraordinary confluence of natural
13 disasters and political upheaval, there probably will never be
14 a time when the unexpected can't be expected to occur, and a
15 confirmable plan, preferably a substantially consensual one,
16 is necessary for Puerto Rico and its instrumentalities to
17 truly move forward as contemplated by PROMESA.

18 The Court agrees with the objectors that the
19 deadlines sought by Movants are unrealistically harsh, and
20 Movants have indicated that they will not push back on the
21 Court's inclination to make the first critical deadline one
22 that is early in 2021. The Court finds that that is
23 appropriate given the ongoing pandemic issues, the changes in
24 Oversight Board membership, and Puerto Rico's elections and
25 their aftermath.

1 So, the specific relief that was requested is denied,
2 but the Court is nevertheless persuaded that successful work,
3 including meaningful negotiations, may be facilitated by
4 imposing a deadline for the Oversight Board to produce a
5 substantial product early in 2021. Logically, the power to
6 impose a deadline for filing a plan of adjustment also
7 empowers the Court to set deadlines relating to plan
8 amendments. Moreover, Section 105, and the Court's inherent
9 authority provide ample grounds for the Court to require the
10 Oversight Board, which must leave this process and stake out
11 the territory for a confirmable plan of adjustment, consensual
12 or otherwise, to formulate and disclose the material terms
13 upon which it intends to proceed, and to disclose the material
14 terms or a formal plan amendment.

15 Therefore, the Court is Ordering the Oversight Board
16 to file, by February 10th, 2021, at a minimum, an informative
17 motion comprising a term sheet disclosing the material,
18 economic and structural features of an amended plan of
19 adjustment that the Oversight Board intends to propose for
20 confirmation, and preferably, a formal, proposed amended plan
21 and disclosure statement, together with a proposed timetable
22 for the remaining events through confirmation, including, if
23 necessary, formal plan and proposed disclosure statement, and
24 certainly including discovery and litigation in connection
25 with the proposal, solicitation, voting and confirmation

1 proceedings.

2 If the Board does not file a formal, proposed amended
3 plan and disclosure statement on or before February 10th, the
4 timetable must be a very tight timetable to a formal proposed
5 plan of adjustment and then the subsequent events. In
6 developing the amended plan of adjustment, the Oversight Board
7 and other relevant stakeholders are encouraged to negotiate
8 responsibly and in good faith. Failure to comply with the
9 February 10th, 2021, deadline may result in the consideration
10 of more stringent measures.

11 The Court does recognize that there may be some
12 motion practice in relation to some of these requirements, and
13 that will be taken up on its merits, if necessary, in terms of
14 any requested changes to the timing. Of course, nothing in
15 this Order precludes the Oversight Board from filing a formal
16 amended plan of adjustment prior to the deadline. At a
17 minimum, the Board has to disclose the basic material elements
18 of the proposal and a specific timetable.

19 The disclosure required by this Order is in addition
20 to periodic reports pursuant to the Order Regarding Status
21 Report of Financial Oversight and Management Board for Puerto
22 Rico Regarding COVID-19 Pandemic and Proposed Disclosure
23 Statement Schedule. That Order is at ECF No. 14679.

24 In its most recent such status report filed at ECF
25 No. 14923, the Oversight Board has proposed to file a further

1 status report by December 4th, 2020, and so the next status
2 report shall be filed on or before that date.

3 Accordingly, the Joint Motion of PSA Creditors
4 Pursuant to Section 312 of PROMESA and Section 105 of the
5 Bankruptcy Code to Impose Deadlines For Plan of Adjustment,
6 Docket Entry No. 14478, is granted to the extent that the
7 Oversight Board is required to develop and disclose the
8 contours of its proposed amended plan, and propose a schedule
9 for the path to confirmation as outlined in these remarks, and
10 is denied in all other respects. And the Court will enter an
11 order promptly embodying this ruling.

12 Thank you all for your arguments, for your
13 submissions, and again, for your pivot to address the Court's
14 specific concerns and proposals. Are there any other matters
15 that anyone wants to address today? I will wait 30 seconds
16 for anyone to speak who wants to be heard.

17 (No response.)

18 THE COURT: Very well. This concludes the hearing
19 Agenda for today. Tomorrow's telephonic hearing concerning
20 Omnibus Claim Objections will begin at 9:30 AM Atlantic
21 Standard Time.

22 As always, I thank the court staff in Puerto Rico,
23 Boston and New York for their work in preparing for and
24 conducting today's hearing, and for their outstanding ongoing
25 support of the administration of these very complex cases.

1 Stay safe and keep well, everyone. We are adjourned.
2 (At 12:39 PM, proceedings concluded.)
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1 U.S. DISTRICT COURT)
2 DISTRICT OF PUERTO RICO)

3

4 I certify that this transcript consisting of 98 pages is
5 a true and accurate transcription to the best of my ability of
6 the proceedings in this case before the Honorable United
7 States District Court Judge Laura Taylor Swain, and the
8 Honorable United States Magistrate Judge Judith Gail Dein on
9 October 28, 2020.

10

11

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13 S/ Amy Walker

14 Amy Walker, CSR 3799

15 Official Court Reporter

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